

***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
APPENDIX**





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Original

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UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

\_\_\_\_\_  
No. T-4567

UNITED STATES OF AMERICA,

Appellee,

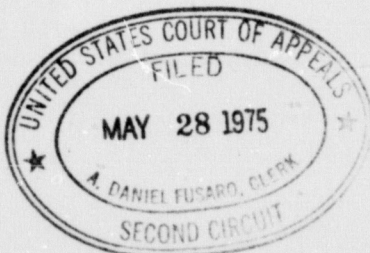
-against-

JOSEPH RACKER, ,

Defendant-Appellant.

\_\_\_\_\_  
ON APPEAL FROM THE UNITED STATES DISTRICT  
COURT FOR THE EASTERN DISTRICT OF NEW YORK

\_\_\_\_\_  
APPENDIX OF DEFENDANT-APPELLANT



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UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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UNITED STATES OF AMERICA,

Appellee,

-against-

JOSEPH RACKER, ,

Defendant-Appellant.

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ON APPEAL FROM THE UNITED STATES DISTRICT  
COURT FOR THE EASTERN DISTRICT OF NEW YORK

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APPENDIX OF DEFENDANT-APPELLANT

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- against -

JOSEPH RACKER,

Defendant.

Cr. No. \_\_\_\_\_  
(T. 18, U.S.C., §371  
and §2; T. 41, U.S.C.,  
§51 and §54)

----- X  
THE GRAND JURY CHARGES:

(1) At all times material hereto, the Grumman Aerospace Corporation, Bethpage, New York, was a prime contractor holding negotiated contracts entered into and by the United States Navy, an agency of the United States, for the furnishing of supplies, materials, equipment and services to the United States Navy.

(2) At all times material hereto, Angelito Joseph Claros, Frank J. Munafo, Robert A. Ragozzine, William George Sheridan, Michael Strenk, Jr. and Thomas Vincent Toner were employees and agents of the Grumman Aerospace Corporation, Bethpage, New York.

(3) At all times material hereto, U. S. Electronic Publications, Incorporated, Hicksville, New York, was a subcontractor of the Grumman Aerospace Corporation holding an agreement to perform part of the work and to make and furnish articles and services, that is: writings, technical documents, manuals and publications required for the performance of the aforesaid negotiated contracts by the Grumman Aerospace Corporation.

(4) At all times material hereto, the defendant, JOSEPH RACKER was President of U. S. Electronic Publications, Incorporated.



(5) At all times material hereto, Jerome Berman was Vice President of U. S. Electronic Publications, Incorporated, and Stanley Gerstin was Chairman of the Board of said corporation.

COUNT ONE

From in or around January, 1970 to in or about March 26, 1974, within the eastern District of New York, the defendant, JOSEPH RACKER, together with Angelito Joseph Claros, herein named as a co-conspirator but not as a co-defendant, did knowingly and wilfully combine and conspire to defraud the United States of America and to commit offenses against the United States of America in violation of Title 41, United States Code, Section 51 and Section 54, by conspiring to knowingly pay, grant and receive fees, commissions, compensations, gifts and gratuities made by and on behalf of U. S. Electronic Publications, Incorporated, to employees and agents of the Grumman Aerospace Corporation as inducements for the award of subcontracts and orders to U. S. Electronic Publications, Incorporated, from the Grumman Aerospace Corporation and as an acknowledgement of subcontracts and orders previously awarded.

It was a part of said conspiracy that the defendant, JOSEPH RACKER, together with Angelito Joseph Claros would and did conspire to hamper, hinder, frustrate and impede by craft, trickery, and dishonest means, including kick backs, the lawful and legitimate functions, operations and purpose of the United States Navy, an agency of the United States of America, in the administration of its contracts with the Grumman Aerospace Corporation, including the right to have the giving and awarding of subcontracts and purchase orders by the Grumman Aerospace Corporation to various suppliers therein free from chicanery and taint.

In furtherance of the aforementioned conspiracy and to effectuate the purposes thereof, the defendant, JOSEPH RACKER, together with Angelito Joseph Claros, herein named as a co-conspirator but not as a co-defendant, committed the following:

O V E R T   A C T S

1. In or about early 1971, within the Eastern District of New York, the defendant JOSEPH RACKER assisted Angelito Joseph Claros in the formation of a company known as Techwri Services.
2. On or about April 18, 1972, within the Eastern District of New York, the defendant JOSEPH RACKER gave Angelito Joseph Claros a statement showing the amounts of money previously paid by RACKER to Claros.
3. In or around February, 1974, the defendant JOSEPH RACKER showed Angelito Joseph Claros a series of Techwri Services invoices which RACKER had caused to be prepared to cover the illegal payments to Claros.

(Title 18, United States Code, Seciton 371)

COUNT TWO

On or about the 9th day of June 1971, within the Eastern District of New York, the defendant, JOSEPH RACKER directly and indirectly, and on behalf of a subcontractor, to wit: U. S. Electronic Publications, Incorporated, did knowingly give to Angelito Joseph Claros a fee, commission, compensation,



Corporation and as an acknowledgement of subcontracts and orders previously awarded by the Grumman Aerospace Corporation to U. S. Electronic Publications, Incorporated. (Title 41, United States Code, §51 and §54; and Title 18, United States Code, §2).

COUNT FIVE

On or about the 1st day of August 1972, within the Eastern District of New York, the defendant, JOSEPH RACKER directly and indirectly, and on behalf of a subcontractor, to wit: U. S. Electronic Publications, Incorporated, did knowingly give to Angelito Joseph Claros a fee, commission, compensation, gift and gratuity, that is, a check drawn to Techwri Services in the amount of \$1,000 as an inducement for the award of subcontracts from the Grumman Aerospace Corporation and as an acknowledgement of subcontracts and orders previously awarded by the Grumman Aerospace Corporation to U. S. Electronic Publications, Incorporated. (Title 41, United States Code, §51 and §54; and Title 18, United States Code, §2).

COUNT SIX

On or about the 8th day of August 1973, within the Eastern District of New York, the defendant, JOSEPH RACKER directly and indirectly, and on behalf of a subcontractor, to wit: U. S. Electronic Publications, Incorporated, did knowingly give to Angelito Joseph Claros a fee, commission, compensation, gift and gratuity, that is, a check drawn to Techwri Services in the amount of \$5,000 as an inducement for the award of subcontracts from the Grumman Aerospace Corporation and as an acknowledgement of subcontracts and orders previously awarded by the Grumman Aerospace Corporation to U. S. Electronic Publications, Incorporated. (Title 41, United States Code, §51 and §54; and Title 18, United States Code, §2).

gift and gratuity, that is, a check drawn to Techwri Services in the amount of \$4,150 as an inducement for the award of subcontracts from the Grumman Aerospace Corporation and as an acknowledgement of subcontracts and orders previously awarded by the Grumman Aerospace Corporation to U. S. Electronic Publications, Incorporated. (Title 41, United States Code, §51 and §54; and Title 18, United States Code, §2).

COUNT THREE

On or about the 14th day of July 1971, within the Eastern District of New York, the defendant, JOSEPH RACKER directly and indirectly, and on behalf of a subcontractor, to wit: U. S. Electronic Publications, Incorporated, did knowingly give to Angelito Joseph Claros a fee, commission, compensation, gift and gratuity, that is, a check drawn to Techwri Services in the amount of \$2,450 as an inducement for the award of subcontracts from the Grumman Aerospace Corporation and as an acknowledgement of subcontracts and orders previously awarded by the Grumman Aerospace Corporation to U. S. Electronic Publications, Incorporated. (Title 41, United States Code, §51 and §54; and Title 18, United States Code, §2).

COUNT FOUR

On or about the 16th day of August 1971, within the Eastern District of New York, the defendant, JOSEPH RACKER directly and indirectly, and on behalf of a subcontractor, to wit: U. S. Electronic Publications, Incorporated, did knowingly give to Angelito Joseph Claros a fee, commission, compensation, gift and gratuity, that is, a check drawn to Techwri Services in the amount of \$1,300 as an inducement for the award of subcontracts from the Grumman Aerospace



COUNT SEVEN

From in or around September, 1970 to on or about February 19, 1974, within the Eastern District of New York, the defendant, JOSEPH RACKER, together with Frank J. Munafo, herein named as a co-conspirator but not as a co-defendant, did knowingly and wilfully combine and conspire to defraud the United States of America and to commit offenses against the United States of America in violation of Title 41, United States Code, Section 51 and Section 54, by conspiring to knowingly pay, grant and receive fees, commissions, compensations, gifts and gratuities made by and on behalf of U. S. Electronic Publications, Incorporated, to employees and agents of the Grumman Aerospace Corporation as inducements for the award of subcontracts and orders to U. S. Electronic Publications, Incorporated from the Grumman Aerospace Corporation and as an acknowledgement of subcontracts and orders previously awarded.

It was a part of said conspiracy that the defendant, JOSEPH RACKER, together with Frank J. Munafo would and did conspire to hamper, hinder, frustrate and impede by craft, trickery, and dishonest means, including kick backs, the lawful and legitimate functions, operations and purpose of the United States Navy, an agency of the United States of America, in the administration of its contracts with the Grumman Aerospace Corporation, including the right to have the giving and awarding of subcontracts and purchase orders by the Grumman Aerospace Corporation to various suppliers therein free from chicanery and taint.

In furtherance of the aforementioned conspiracy and to effectuate the purposes thereof, the defendant, JOSEPH RACKER, together with Frank J. Munafo, herein named as a co-conspirator but not as a co-defendant, committed the following:

OVERT ACTS

1. On or about May 21, 1973, within the Eastern District of New York, the defendant JOSEPH

RACKER met with Frank J. Munafo.

2. On or about October 16, 1973, within the Eastern District of New York, the defendant JOSEPH RACKER met with Frank J. Munafo. (Title 18, United States Code, Section 371)

COUNT EIGHT

On or about the 21st day of May 1973, within the Eastern District of New York, the defendant, JOSEPH RACKER directly and indirectly, and on behalf of a subcontractor, to wit: U. S. Electronic Publications, Incorporated, did knowingly give to Frank J. Munafo a fee, commission, compensation, gift and gratuity, that is, a check drawn to RC Typewrite Service in the amount of \$4,000 as an inducement for the award of subcontracts from the Grumman Aerospace Corporation and as an acknowledgement of subcontracts and orders previously awarded by the Grumman Aerospace Corporation to U. S. Electronic Publications, Incorporated. (Title 41, United States Code, §51 and §54; and Title 18, United States Code, §2).

COUNT NINE

On or about the 8th day of August 1973, within the Eastern District of New York, the defendant, JOSEPH RACKER directly and indirectly, and on behalf of a subcontractor, to wit: U. S. Electronic Publications, Incorporated, did knowingly give to Frank J. Munafo a fee, commission, compensation, gift and gratuity, that is, a check drawn to RC Typewrite Service in the amount of \$5,000 as an inducement for the award of subcontracts from the Grumman Aerospace Corporation and as an acknowledgement of subcontracts and orders previously awarded by the Grumman Aerospace Corporation to U. S. Electronic Publications, Incorporated. (Title 41, United States Code, §51 and §54; and Title 18, United States Code, §2).

COUNT TEN

On or about the 16th day of October 1973, within the Eastern District of New York, the defendant, JOSEPH



RACKER directly and indirectly, and on behalf of a subcontractor, to wit: U. S. Electronic Publications, Incorporated, did knowingly give to Frank J. Munafo a fee, commission, compensation, gift and gratuity, that is, a check drawn to RC Typewrite Service in the amount of \$1,500 as an inducement for the award of subcontracts from the Grumman Aerospace Corporation and as an acknowledgement of subcontracts and orders previously awarded by the Grumman Aerospace Corporation to U. S. Electronic Publications, Incorporated. (Title 41, United States Code, §51 and §54; and Title 18, United States Code, §2).

COUNT ELEVEN

From in or around July, 1972 to on or about February 19, 1974, within the Eastern District of New York, the defendant, JOSEPH RACKER, together with Robert A. Ragozzine, herein named as a co-conspirator but not as a co-defendant, did knowingly and wilfully combine and conspire to defraud the United States of America and to commit offenses against the United States of America in violation of Title 41, United States Code, Section 51 and Section 54, by conspiring to knowingly pay, grant and receive fees, commissions, compensations, gifts and gratuities made by and on behalf of U. S. Electronic Publications, Incorporated, to employees and agents of the Grumman Aerospace Corporation as inducements for the award of subcontracts and orders to U. S. Electronic Publications, Incorporated from the Grumman Aerospace Corporation and as an acknowledgement of subcontracts and orders previously awarded.

It was a part of said conspiracy that the defendant, JOSEPH RACKER, together with Robert A. Ragozzine would and did conspire to hamper, hinder, frustrate and impede by craft, trickery, and dishonest means, including kick backs, the lawful and legitimate functions, operations and purpose of the United States Navy, an agency of the United States of America, in the administration of its contracts with the Grumman Aerospace Corporation, including the right to have

the giving and awarding of subcontracts and purchase orders by the Grumman Aerospace Corporation to various suppliers therein free from chicanery and taint.

In furtherance of the aforementioned conspiracy and to effectuate the purposes thereof, the defendant, JOSEPH RACKER, together with Robert A. Ragozzine, herein named as a co-conspirator but not as a co-defendant, committed the following:

O V E R T   A C T S

1. On or about October 11, 1972, within the Eastern District of New York, the defendant JOSEPH RACKER met with Robert A. Ragozzine.
2. On or about March 16, 1973, within the Eastern District of New York, the defendant JOSEPH RACKER met with Robert A. Ragozzine.

(Title 18, United States Code, Section 371)

COUNT TWELVE

On or about the 11th day of October 1972, within the Eastern District of New York, the defendant, JOSEPH RACKER directly and indirectly, and on behalf of a subcontractor, to wit: U. S. Electronic Publications, Incorporated, did knowingly give to Robert A. Ragozzine a fee, commission, compensation, gift and gratuity, that is, a check drawn to H.A.S. Secretarial in the amount of \$3,000 as an inducement for the award of subcontracts from the Grumman Aerospace Corporation and as an acknowledgement of subcontracts and orders previously awarded by the Grumman Aerospace Corporation to U. S. Electronic Publications, Incorporated. (Title 41, United States Code, §51 and §54; and Title 18, United States Code, §2).

COUNT THIRTEEN

On or about the 4th day of January 1973, within the Eastern District of New York, the defendant, JOSEPH RACKER directly and indirectly, and on behalf of a subcontractor,



to wit: U. S. Electronic Publications, Incorporated, did knowingly give to Robert A. Ragozzine a fee, commission, compensation, gift and gratuity, that is, a check drawn to H. A. S. Secretarial in the amount of \$2,000 as an inducement for the award of subcontracts from the Grumman Aerospace Corporation and as an acknowledgement of subcontracts and orders previously awarded by the Grumman Aerospace Corporation to U. S. Electronic Publications, Incorporated. (Title 41, United States Code, §51 and §54; and Title 18, United States Code, §2)

COUNT FOURTEEN

On or about the 8th day of February 1973, within the Eastern District of New York, the defendant, JOSEPH RACKER directly and indirectly, and on behalf of a subcontractor, to wit: U. S. Electronic Publications, Incorporated, did knowingly give to Robert A. Ragozzine a fee, commission, compensation, gift and gratuity, that is, a check drawn to H.A.S. Secretarial in the amount of \$600 as an inducement for the award of subcontracts from the Grumman Aerospace Corporation and as an acknowledgement of subcontracts and orders previously awarded by the Grumman Aerospace Corporation to U. S. Electronic Publications, Incorporated. (Title 41, United States Code, §51 and §54; and Title 18, United States Code, §2)

COUNT FIFTEEN

On or about the 16th day of March 1973, within the Eastern District of New York, the defendant, JOSEPH RACKER directly and indirectly, and on behalf of a subcontractor, to wit: U. S. Electronic Publications, Incorporated, did knowingly give to Robert A. Ragozzine a fee, commission, compensation, gift and gratuity, that is, a check drawn to H.A.S. Secretarial in the amount of \$5,050 as an inducement for the award of subcontracts from the Grumman Aerospace Corporation and as an acknowledgement of subcontracts and orders previously awarded by the Grumman Aerospace Corporation to U. S. Electronic Publications, Incorporated. (Title 41,

United States Code, §51 and §54; and Title 18, United States Code, §2).

COUNT SIXTEEN

On or about the 21st day of May 1973, within the Eastern District of New York, the defendant, JOSEPH RACKER directly and indirectly, and on behalf of a subcontractor, to wit: U. S. Electronic Publications, Incorporated, did knowingly give to Robert A. Ragozzine a fee, commission, compensation, gift and gratuity, that is, a check drawn to H.A.S. Secretarial in the amount of \$1,350 as an inducement for the award of subcontracts from the Grumman Aerospace Corporation and as an acknowledgement of subcontracts and orders previously awarded by the Grumman Aerospace Corporation to U. S. Electronic Publications, Incorporated. (Title 41, United States Code, §51 and §54; and Title 18, United States Code, §2).

COUNT SEVENTEEN

On or about the 15th day of November 1973, within the Eastern District of New York, the defendant, JOSEPH RACKER directly and indirectly, and on behalf of a subcontractor, to wit: U. S. Electronic Publications, Incorporated, did knowingly give to Robert A. Ragozzine a fee, commission, compensation, gift and gratuity, that is, a check drawn to H.A.S. Secretarial in the amount of \$2,400 as an inducement for the award of subcontracts from the Grumman Aerospace Corporation and as an acknowledgement of subcontracts and orders previously awarded by the Grumman Aerospace Corporation to U. S. Electronic Publications, Incorporated. (Title 41, United States Code, §51 and §54; and Title 18, United States Code, §2).



COUNT EIGHTEEN

From in or around October, 1971 to on or about January 15, 1974, within the Eastern District of New York, the defendant, JOSEPH RACKER, together with William George Sheridan, herein named as a co-conspirator but not as a co-defendant, did knowingly and wilfully combine and conspire to defraud the United States of America and to commit offenses against the United States of America in violation of Title 41, United States Code, Section 51 and Section 54, by conspiring to knowingly pay, grant and receive fees, commissions, compensations, gifts and gratuities made by and on behalf of U. S. Electronic Publications, Incorporated, to employees and agents of the Grumman Aerospace Corporation as inducements for the award of subcontracts and orders to U. S. Electronic Publications, Incorporated from the Grumman Aerospace Corporation and as an acknowledgement of subcontracts and orders previously awarded.

It was a part of said conspiracy that the defendant, JOSEPH RACKER, together with William George Sheridan would and did conspire to hamper, hinder, frustrate and impede by craft, trickery, and dishonest means, including kick backs, the lawful and legitimate functions, operations and purpose of the United States Navy, an agency of the United States of America, in the administration of its contracts with the Grumman Aerospace Corporation, including the right to have the giving and awarding of subcontracts and purchase orders by the Grumman Aerospace Corporation to various suppliers therein free from chicanery and taint.

In furtherance of the aforementioned conspiracy and to effectuate the purposes thereof, the defendant, JOSEPH RACKER, together with William George Sheridan, herein named as a co-conspirator but not as a co-defendant, committed the following:

O V E R T   A C T S

1. On or about October 1, 1971, within the Eastern District of New York, the defendant

JOSEPH RACKER met with William George Sheridan.

2. In or around June, 1972, within the Eastern District of New York, the defendant JOSEPH RACKER assisted William George Sheridan in the formation of a company known as Raltan Services.

(Title 18, United States Code, Section 371)

COUNT NINETEEN

On or about the 12th day of October 1972, within the Eastern District of New York, the defendant, JOSEPH RACKER directly and indirectly, and on behalf of a subcontractor, to wit: U. S. Electronic Publications, Incorporated, did knowingly give to William George Sheridan a fee, commission, compensation, gift and gratuity, that is, a check drawn to Raltan Services in the amount of \$1,700 as an inducement for the award of subcontracts from the Grumman Aerospace Corporation and as an acknowledgement of subcontracts and orders previously awarded by the Grumman Aerospace Corporation to U. S. Electronic Publications, Incorporated. (Title 41, United States Code, §51 and §54; and Title 18, United States Code, §2).

COUNT TWENTY

On or about the 30th day of January 1973, within the Eastern District of New York, the defendant, JOSEPH RACKER directly and indirectly, and on behalf of a subcontractor, to wit: U. S. Electronic Publications, Incorporated, did knowingly give to William George Sheridan a fee, commission, compensation, gift and gratuity, that is, a check drawn to Raltan Services in the amount of \$750 as an inducement for the award of subcontracts from the Grumman Aerospace Corporation and as an acknowledgement of subcontracts and orders previously awarded by the Grumman Aerospace Corporation to U. S. Electronic Publications, Incorporated. (Title 41, United States Code, §51 and §54;



and Title 18, United States Code, §2).

COUNT TWENTY-ONE

On or about the 16th day of March 1973, within the Eastern District of New York, the defendant, JOSEPH RACKER directly and indirectly, and on behalf of a subcontractor, to wit: U. S. Electronic Publications, Incorporated, did knowingly give to William George Sheridan a fee, commission, compensation, gift and gratuity, that is, a check drawn to Raltan Services in the amount of \$4,000 as an inducement for the award of subcontracts from the Grumman Aerospace Corporation and as an acknowledgement of subcontracts and orders previously awarded by the Grumman Aerospace Corporation to U. S. Electronic Publications, Incorporated. (Title 41, United States Code, §51 and §54; and Title 18, United States Code, §2).

COUNT TWENTY-TWO

On or about the 21st day of May 1973, within the Eastern District of New York, the defendant, JOSEPH RACKER directly and indirectly, and on behalf of a subcontractor, to wit: U. S. Electronic Publications, Incorporated, did knowingly give to William George Sheridan a fee, commission, compensation, gift and gratuity, that is, a check drawn to Raltan Services in the amount of \$2,520 as an inducement for the award of subcontracts from the Grumman Aerospace Corporation and as an acknowledgement of subcontracts and orders previously awarded by the Grumman Aerospace Corporation to U. S. Electronic Publications, Incorporated. (Title 41, United States Code, §51 and §54; and Title 18, United States Code, §2).

COUNT TWENTY-THREE

On or about the 15th day of August 1973, within the Eastern District of New York, the defendant, JOSEPH RACKER directly and indirectly, and on behalf of a subcontractor, to wit: U. S. Electronic Publications, Incorporated, did knowingly give to William George Sheridan a fee,

commission, compensation, gift and gratuity, that is, a check drawn to Raltan Services in the amount of \$1,800 as an inducement for the award of subcontracts from the Grumman Aerospace Corporation and as an acknowledgement of subcontracts and orders previously awarded by the Grumman Aerospace Corporation to U. S. Electronic Publications, Incorporated. (Title 41, United States Code, §51 and §54; and Title 18, United States Code, §2).

COUNT TWENTY-FOUR

On or about the 15th day of November 1973, within the Eastern District of New York, the defendant, JOSEPH RACKER directly and indirectly, and on behalf of a subcontractor, to wit: U. S. Electronic Publications, Incorporated, did knowingly give to William George Sheridan a fee, commission, compensation, gift and gratuity, that is, a check drawn to Raltan Services in the amount of \$1,600 as an inducement for the award of subcontracts from the Grumman Aerospace Corporation and as an acknowledgement of subcontracts and orders previously awarded by the Grumman Aerospace Corporation to U. S. Electronic Publications, Incorporated. (Title 41, United States Code, §51 and §54; and Title 18, United States Code, §2).

COUNT TWENTY-FIVE

From in or around January, 1971 to on or about June 26, 1973, within the Eastern District of New York, the defendant, JOSEPH RACKER, together with Michael Strenk, Jr. and Stanley Gerstin, herein named as co-conspirators but not as co-defendants, did knowingly and wilfully combine and conspire to defraud the United States of America and to commit offenses against the United States of America in violation of Title 41, United States Code, Section 51 and Section 54, by conspiring to knowingly pay, grant and receive fees, commissions, compensations, gifts and gratuities made by and on behalf of U. S. Electronic Publications, Incorporated,



to employees and agents of the Grumman Aerospace Corporation as inducements for the award of subcontracts and orders to U. S. Electronic Publications, Incorporated from the Grumman Aerospace Corporation and as an acknowledgement of subcontracts and orders previously awarded.

It was a part of said conspiracy that the defendant, JOSEPH RACKER, together with Michael Strenk, Jr. and Stanley Gerstin would and did conspire to hamper, hinder, frustrate and impede by craft, trickery, and dishonest means, including kick backs, the lawful and legitimate functions, operations and purpose of the United States Navy, an agency of the United States of America, in the administration of its contracts with the Grumman Aerospace Corporation, including the right to have the giving and awarding of subcontracts and purchase orders by the Grumman Aerospace Corporation to various suppliers therein free from chicanery and taint.

In furtherance of the aforementioned conspiracy and to effectuate the purposes thereof, the defendant, JOSEPH RACKER, together with Michael Strenk, Jr. and Stanley Gerstin, herein named as co-conspirators but not as co-defendants, committed the following:

O V E R T   A C T S

1. In or around early 1972, within the Eastern District of New York, the defendant JOSEPH RACKER met with Stanley Gerstin at which time RACKER approved a payment of 2% of the contract price to Michael Strenk, Jr. on jobs awarded to U. S. Electronic Publications, Incorporated, through the aid and assistance of Strenk.
2. On or about March 22, 1973, within the Eastern District of New York, Stanley Gerstin met with Michael Strenk, Jr.
3. In or around April, 1973, within the Eastern District of New York, Stanley

Gerstin met with Michael Strenk, Jr. and discussed Strenk's upcoming trip to Las Vegas, Nevada, which was to be paid for by U. S. Electronic Publications, Incorporated.

(Title 18, United States Code, Section 371)

COUNT TWENTY-SIX

On or about the 22nd day of March 1973, within the Eastern District of New York, the defendant, JOSEPH RACKER directly and indirectly, and on behalf of a subcontractor, to wit: U. S. Electronic Publications, Incorporated, did knowingly give to Michael Strenk, Jr. a fee, commission, compensation, gift and gratuity, that is, a check drawn to M & S Services Co. in the amount of \$2,800 as an inducement for the award of subcontracts from the Grumman Aerospace Corporation and as an acknowledgement of subcontracts and orders previously awarded by the Grumman Aerospace Corporation to U. S. Electronic Publications, Incorporated. (Title 41, United States Code, §51 and §54; and Title 18, United States Code, §2).

COUNT TWENTY-SEVEN

On or about the 24th day of April 1973, within the Eastern District of New York, the defendant, JOSEPH RACKER directly and indirectly, and on behalf of a subcontractor, to wit: U. S. Electronic Publications, Incorporated, did knowingly give to Michael Strenk, Jr. a fee, commission, compensation, gift and gratuity, that is, a check drawn to M & S Services Co. in the amount of \$2,650 as an inducement for the award of subcontracts from the Grumman Aerospace Corporation and as an acknowledgement of subcontracts and orders previously awarded by the Grumman Aerospace Corporation to U. S. Electronic Publications, Incorporated. (Title 41, United States Code, §51 and §54; and Title 18, United States Code, §2).



COUNT TWENTY-EIGHT

In or around April, 1973, within the Eastern District of New York, the defendant, JOSEPH RACKER directly and indirectly, and on behalf of a subcontractor, to wit: U. S. Electronic Publications, Incorporated, did knowingly give to Michael Strenk, Jr. a fee, commission, compensation, gift and gratuity, that is, Airline Tickets valued at approximately \$777.45, as an inducement for the award of subcontracts from the Grumman Aerospace Corporation and as an acknowledgement of subcontracts and orders previously awarded by the Grumman Aerospace Corporation to U. S. Electronic Publications, Incorporated. (Title 41, United States Code, §51 and §54; and Title 18, United States Code, §2).

COUNT TWENTY-NINE

On or about the 22nd day of May 1973, within the Eastern District of New York, the defendant, JOSEPH RACKER directly and indirectly, and on behalf of a subcontractor, to wit: U. S. Electronic Publications, Incorporated, did knowingly give to Michael Strenk, Jr. a fee, commission, compensation, gift and gratuity, that is, a check drawn to M & S Services Co. in the amount of \$6,050 as an inducement for the award of subcontracts from the Grumman Aerospace Corporation and as an acknowledgement of subcontracts and orders previously awarded by the Grumman Aerospace Corporation to U. S. Electronic Publications, Incorporated. (Title 41, United States Code, §51 and §54; and Title 18, United States Code, §2).

COUNT THIRTY

On or about the 19th day of June 1973, within the Eastern District of New York, the defendant, JOSEPH RACKER directly and indirectly, and on behalf of a subcontractor, to wit: U. S. Electronic Publications, Incorporated, did knowingly give to Michael Strenk, Jr. a fee, commission, compensation, gift and gratuity, that is, a check drawn to M & S Services Co. in the amount of \$5,300 as an inducement

for the award of subcontracts from the Grumman Aerospace Corporation and as an acknowledgement of subcontracts and orders previously awarded by the Grumman Aerospace Corporation to U. S. Electronic Publications, Incorporated. (Title 41, United States Code, §51 and §54; and Title 18, United States Code, §2).

COUNT THIRTY-ONE

From in or around January, 1969 to on or about February 1, 1974, within the Eastern District of New York, the defendant, JOSEPH RACKER, together with Thomas Vincent Toner, herein named as a co-conspirator but not as a co-defendant, did knowingly and wilfully combine and conspire to defraud the United States of America and to commit offenses against the United States of America in violation of Title 41, United States Code, Section 51 and Section 54, by conspiring to knowingly pay, grant and receive fees, commissions, compensations, gifts and gratuities made by and on behalf of U. S. Electronic Publications, Incorporated, to employees and agents of the Grumman Aerospace Corporation as inducements for the award of subcontracts and orders to U. S. Electronic Publications, Incorporated from the Grumman Aerospace Corporation and as an acknowledgement of subcontracts and orders previously awarded.

It was a part of said conspiracy that the defendant, JOSEPH RACKER, together with Thomas Vincent Toner would and did conspire to hamper, hinder, frustrate and impede by craft, trickery, and dishonest means, including kick backs, the lawful and legitimate functions, operations and purpose of the United States Navy, an agency of the United States of America, in the administration of its contracts with the Grumman Aerospace Corporation, including the right to have the giving and awarding of subcontracts and purchase orders by the Grumman Aerospace Corporation to various suppliers therein free from chicanery and taint.



In furtherance of the aforementioned conspiracy and to effectuate the purposes thereof, the defendant, JOSEPH RACKER, together with Thomas Vincent Toner, herein named as a co-conspirator but not as a co-defendant, committed the following:

O V E R T   A C T S

1. In or around 1969, within the Eastern District of New York, the defendant JOSEPH RACKER met with Thomas Vincent Toner and discussed the payment of money to Toner by U. S. Electronic Publications, Incorporated.
2. In or around early 1971, within the Eastern District of New York, the defendant JOSEPH RACKER assisted Thomas Vincent Toner in the creation of a company known as Adner Services.
3. In or around early 1974, within the Eastern District of New York, the defendant JOSEPH RACKER showed Thomas Vincent Toner a series of invoices RACKER had caused to be prepared in the name of Adner Services.

(Title 18, United States Code, Section 371)

COUNT THIRTY-TWO

On or about the 14th day of April 1971, within the Eastern District of New York, the defendant, JOSEPH RACKER directly and indirectly, and on behalf of a subcontractor, to wit: U. S. Electronic Publications, Incorporated, did knowingly give to Thomas Vincent Toner a fee, commission, compensation, gift and gratuity, that is, a check drawn to Adner Services Company in the amount of \$3,000 as an inducement for the award of subcontracts from the Grumman Aerospace Corporation and as an acknowledgement of subcontracts and orders previously awarded by the Grumman

Aerospace Corporation to U. S. Electronic Publications, Incorporated. (Title 41, United States Code, §51 and §54; and Title 18, United States Code, §2).

COUNT THIRTY-THREE

On or about the 24th day of May 1971, within the Eastern District of New York, the defendant, JOSEPH RACKER directly and indirectly, and on behalf of a subcontractor, to wit: U. S. Electronic Publications, Incorporated, did knowingly give to Thomas Vincent Toner a fee, commission, compensation, gift and gratuity, that is, a check drawn to Adner Services in the amount of \$2,000 as an inducement for the award of subcontracts from the Grumman Aerospace Corporation and as an acknowledgement of subcontracts and orders previously awarded by the Grumman Aerospace Corporation to U. S. Electronic Publications, Incorporated. (Title 41, United States Code, §51 and §54; and Title 18, United States Code, §2).

COUNT THIRTY-FOUR

On or about the 19th day of July 1971, within the Eastern District of New York, the defendant, JOSEPH RACKER directly and indirectly, and on behalf of a subcontractor, to wit: U. S. Electronic Publications, Incorporated, did knowingly give to Thomas Vincent Toner a fee, commission, compensation, gift and gratuity, that is, a check drawn to Adner Services in the amount of \$2,500 as an inducement for the award of subcontracts from the Grumman Aerospace Corporation and as an acknowledgement of subcontracts and orders previously awarded by the Grumman Aerospace Corporation to U. S. Electronic Publications, Incorporated. (Title 41, United States Code, §51 and §54; and Title 18, United States Code, §2).

COUNT THIRTY-FIVE

On or about the 12th day of August 1971, within the Eastern District of New York, the defendant, JOSEPH RACKER directly and indirectly, and on behalf of a subcontractor,



to wit: U. S. Electronic Publications, Incorporated, did knowingly give to Thomas Vincent Toner a fee, commission, compensation, gift and gratuity, that is, a check drawn to Adner Services in the amount of \$4,200 as an inducement for the award of subcontracts from the Grumman Aerospace Corporation and as an acknowledgement of subcontracts and orders previously awarded by the Grumman Aerospace Corporation to U. S. Electronic Publications, Incorporated. (Title 41, United States Code, §51 and §54; and Title 18, United States Code, §2).

COUNT THIRTY-SIX

On or about the 28th day of February 1972, within the Eastern District of New York, the defendant, JOSEPH RACKER directly and indirectly, and on behalf of a subcontractor, to wit: U. S. Electronic Publications, Incorporated, did knowingly give to Thomas Vincent Toner a fee, commission, compensation, gift and gratuity, that is, a check drawn to Adner Services in the amount of \$1,500 as an inducement for the award of subcontracts from the Grumman Aerospace Corporation and as an acknowledgement of subcontracts and orders previously awarded by the Grumman Aerospace Corporation to U. S. Electronic Publications, Incorporated. (Title 41, United States Code, §51 and §54; and Title 18, United States Code, §2).

COUNT THIRTY-SEVEN

On or about the 16th day of May 1972, within the Eastern District of New York, the defendant, JOSEPH RACKER directly and indirectly, and on behalf of a subcontractor, to wit: U. S. Electronic Publications, Incorporated, did knowingly give to Thomas Vincent Toner a fee, commission, compensation, gift and gratuity, that is, a check drawn to Adner Services in the amount of \$1,300 as an inducement for the award of subcontracts from the Grumman Aerospace Corporation and as an acknowledgement of subcontracts and orders previously awarded by the Grumman Aerospace

Corporation to U. S. Electronic Publications, Incorporated. (Title 41, United States Code, §51 and §54; and Title 18, United States Code, §2).

COUNT THIRTY-EIGHT

On or about the 12th day of October 1972, within the Eastern District of New York, the defendant, JOSEPH RACKER directly and indirectly, and on behalf of a subcontractor, to wit: U. S. Electronic Publications, Incorporated, did knowingly give to Thomas Vincent Toner a fee, commission, compensation, gift and gratuity, that is, a check drawn to Adner Services in the amount of \$3,300 as an inducement for the award of subcontracts from the Grumman Aerospace Corporation and as an acknowledgement of subcontracts and orders previously awarded by the Grumman Aerospace Corporation to U. S. Electronic Publications, Incorporated. (Title 41, United States Code, §51 and §54; and Title 18, United States Code, §2).

COUNT THIRTY-NINE

On or about the 2nd day of January 1973, within the Eastern District of New York, the defendant, JOSEPH RACKER directly and indirectly, and on behalf of a subcontractor, to wit: U. S. Electronic Publications, Incorporated, did knowingly give to Thomas Vincent Toner a fee, commission, compensation, gift and gratuity, that is, a check drawn to Adner Services in the amount of \$2,000 as an inducement for the award of subcontracts from the Grumman Aerospace Corporation and as an acknowledgement of subcontracts and orders previously awarded by the Grumman Aerospace Corporation to U. S. Electronic Publications, Incorporated. (Title 41, United States Code, §51 and §54; and Title 18, United States Code, §2).

COUNT FORTY

On or about the 16th day of March 1973, within the Eastern District of New York, the defendant, JOSEPH RACKER



directly and indirectly, and on behalf of a subcontractor, to wit: U. S. Electronic Publications, Incorporated, did knowingly give to Thomas Vincent Toner a fee, commission, compensation, gift and gratuity, that is, a check drawn to Adner Services in the amount of \$900 as an inducement for the award of subcontracts from the Grumman Aerospace Corporation and as an acknowledgement of subcontracts and orders previously awarded by the Grumman Aerospace Corporation to U. S. Electronic Publications, Incorporated. (Title 41, United States Code, §51 and §54; and Title 18, United States Code, §2).

COUNT FORTY-ONE

On or about the 21st day of May 1973, within the Eastern District of New York, the defendant, JOSEPH RACKER directly and indirectly, and on behalf of a subcontractor, to wit: U. S. Electronic Publications, Incorporated, did knowingly give to Thomas Vincent Toner a fee, commission, compensation, gift and gratuity, that is, a check drawn to Adner Services in the amount of \$2,200 as an inducement for the award of subcontracts from the Grumman Aerospace Corporation and as an acknowledgement of subcontracts and orders previously awarded by the Grumman Aerospace Corporation to U. S. Electronic Publications, Incorporated. (Title 41, United States Code, §51 and §54; and Title 18, United States Code, §2).

COUNT FORTY-TWO

On or about the 8th day of August 1973, within the Eastern District of New York, the defendant, JOSEPH RACKER directly and indirectly, and on behalf of a subcontractor, to wit: U. S. Electronic Publications, Incorporated, did knowingly give to Thomas Vincent Toner a fee, commission, compensation, gift and gratuity, that is, a check drawn to Adner Services in the amount of \$4,800 as an inducement for the award of subcontracts from the Grumman Aerospace Corporation and as an acknowledgement of subcontracts and

orders previously awarded by the Grumman Aerospace Corporation to U. S. Electronic Publications, Incorporated. (Title 41, United States Code, §51 and §54; and Title 18, United States Code, §2).

COUNT FORTY-THREE

On or about the 15th day of November 1973, within the Eastern District of New York, the defendant, JOSEPH RACKER directly and indirectly, and on behalf of a subcontractor, to wit: U. S. Electronic Publications, Incorporated, did knowingly give to Thomas Vincent Toner a fee, commission, compensation, gift and gratuity, that is, a check drawn to Adner Services in the amount of \$5,000 as an inducement for the award of subcontracts from the Grumman Aerospace Corporation and as an acknowledgement of subcontracts and orders previously awarded by the Grumman Aerospace Corporation to U. S. Electronic Publications, Incorporated. (Title 41, United States Code, §51 and §54; and Title 18, United States Code, §2).

A TRUE BILL.

\_\_\_\_\_  
FOREMAN.

\_\_\_\_\_  
UNITED STATES ATTORNEY



ADDRESS REPLY TO  
UNITED STATES ATTORNEY  
AND REFER TO  
INITIALS AND NUMBER

RJD:RED:cj  
F.#743,150

United States Department of Justice

UNITED STATES ATTORNEY

EASTERN DISTRICT OF NEW YORK  
FEDERAL BUILDING  
BROOKLYN, N. Y. 11201

January 8, 1975

Arthur Lubkin, Esq.  
3000 Marcus Avenue  
Lake Success, New York 11040

Re: United States v. Joseph Racker  
Docket No. 74 Cr 589

Dear Mr. Lubkin:

Pursuant to our conversation of January 8, 1975, in the presence of your client, Joseph Racker, this letter is to confirm that an understanding exists between the office of the United States Attorney for the Eastern District of New York and Mr. Racker as follows:

- (1) Mr. Racker will cooperate fully with the Government in its investigation and prosecution of kickbacks, bid rigging, fraud and other criminal activities concerning Grumman Aerospace Corporation and other prime contractors and subcontractors involved with the Department of Defense. This cooperation includes the full, complete and truthful disclosure of all relevant information in his possession. It also includes, if deemed necessary by the Government, his testimony as a witness for the Government, in any and all cases with respect to which he may have relevant information.
- (2) The Government will accept a plea of guilty from Mr. Racker to Counts 1, 4, 10, 16, 19, and 36 of indictment no. 74 CR 589. Mr. Racker

January 8, 1975

agrees to plead guilty to these counts. This plea of guilty will be in full satisfaction for all criminal charges (including criminal tax charges) that may be brought by the United States Attorney for the Eastern District of New York against Mr. Racker with respect to his activities with the Grumman Aerospace Corporation and other prime contractors and subcontractors involved with the Department of Defense. At the time of sentencing upon his plea of guilty the Government will move to dismiss the remaining counts in indictment no. 74 CR 589. In addition, in exchange for this plea of guilty, the Government agrees not to bring a criminal prosecution against Mr. Racker's wife, Marianne, for any role she may have played in the above-described criminal activities, including criminal tax charges related thereto.

- (3) This understanding is predicated upon Mr. Racker's telling the complete truth during the course of the investigation and prosecution referred to herein. Furthermore, this understanding in no way precludes the Government from prosecuting him for perjury or making false statements during the course of such investigation and any resulting prosecution. This understanding is also predicated upon a representation by Mr. Racker that his net worth does not exceed \$50,000. Further, this agreement does not preclude the Government from collecting any amounts due and owing to the Internal Revenue Service as a result of Mr. Racker's above-described activities.
- (4) Mr. Racker hereby reserves the right, and the Government consents to such reservation, to raise at a hearing before the District Court and on appeal the issue as to whether the requisite prime contracts between Grumman Aerospace Corporation and the Department of the Navy were "negotiated" within the meaning of Title 41, United States Code, Sections 51-54. In this connection, it is agreed



January 8, 1975

that the Government may substitute, if necessary, any other counts in the indictment for the six counts named in paragraph (2) herein, and Mr. Racker will plead guilty thereto.

- (5) No promises or representations have been made by the Government to Mr. Racker concerning any sentence to be imposed upon the aforementioned plea of guilty, such matters being solely within the province of the Court. However, prior to the time of such sentencing, the Government will bring the extent and nature of Mr. Racker's cooperation to the attention of the Court..

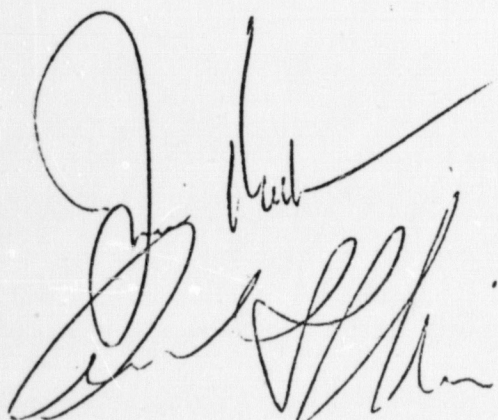
If the aforementioned accurately sets forth the understanding between this office and Mr. Racker, it would be appreciated if you and Mr. Racker would initial the original of this letter and return it to me so that I may make it part of the United States Attorney's file.

Very truly yours,

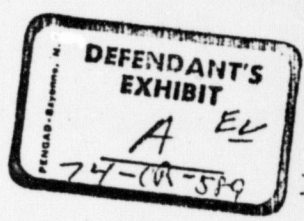
DAVID G. TRAGER  
United States Attorney

By:

Ronald E. DePetris  
Ronald E. DePetris  
Assisçant U.S. Attorney



United States District Court  
FOR THE  
EASTERN DISTRICT OF NEW YORK



UNITED STATES OF AMERICA

DOCKET  
No. 74-CR-589

v.  
JOSEPH RACKER

To MC DONNELL DOUGLAS CORPORATION, c/o The Corporate Trust Company, 277 Park Avenue, New York, N.Y., by an officer servant, agent or employee having knowledge and possession or control and possession of the records and transactions hereinafter enumerated:  
You are hereby commanded to appear in the United States District Court for the Eastern

District of New York at 225 Cadman ~~St~~ Plaza East, Brooklyn, in the city of New York on the 14th day of March 1975 at 9:30 o'clock A.M.

to testify in the case of United States v. Joseph Racker and bring with you all pre-contract advertisements; invitations, correspondence, proposals memoranda, submissions and last and final offers between the U.S. Navy and McDonnell Douglas Corp. re: design, production and development of A2F1 and E2 or their precursors; including all books, records, memoranda, etc. relative thereto.

This subpoena is issued upon application of the defendant.

March 6, 1975.

Lubkin, Cohen & Stracher  
Attorney for defendant  
3000 Marcus Avenue, Lake Success, N.Y.  
Address Tel. No. (516) 437-5900

LEWIS ORGEL  
Clerk.  
By *[Signature]* Deputy Clerk.

<sup>1</sup> Insert "United States," or "defendant" as the case may be.

RETURN

Received this subpoena at \_\_\_\_\_ on \_\_\_\_\_  
and on \_\_\_\_\_ at \_\_\_\_\_  
served it on the within named \_\_\_\_\_  
by delivering a copy to \_\_\_\_\_ and tendering to \_\_\_\_\_ the fee for one day's attendance and the mileage allowed by law.<sup>1</sup>

Dated: \_\_\_\_\_  
\_\_\_\_\_, 19 \_\_\_\_\_ By \_\_\_\_\_

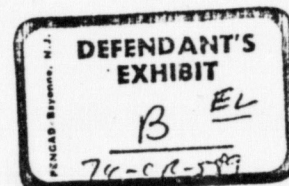
Service Fees  
Travel \_\_\_\_\_\$  
Services \_\_\_\_\_



## United States District Court

FOR THE

EASTERN DISTRICT OF NEW YORK



UNITED STATES OF AMERICA

v.

JOSEPH RACKER

DOCKET

No. 74-CR-589

To FAIRCHILD REPUBLIC COMPANY, Conklin Avenue, Farmingdale, New York,  
by an officer servant, agent or employee having knowledge and pos-  
session or control and possession of the records and transactions  
hereinafter enumerated:

You are hereby commanded to appear in the United States District Court for the Eastern

District of New York at 225 Cadman ~~at~~ Plaza East, Brooklyn in the city of

New York on the 14th day of March 19 75 at 9:30 o'clock A.M.

to testify in the case of United States v. Joseph Racker and bring with you  
all pre-contract advertisements; invitations, correspondence, proposals  
memoranda, submissions and last and final offers between the U.S. Navy  
and Fairchild Republic Co. re: design, production and development of EA6,  
A2F1 and E2 or their precursors; including all books, records, memoranda  
etc. relative thereto.

This subpoena is issued upon application of the defendant.

March 6, 19 75.

Lubkin, Cohen & Stracher

Attorney for defendant

3000 Marcus Avenue, Lake Success, N.Y.

Address Tel. No. (516) 437-5900

By Lewis Orgel Clerk.  
[Signature] Deputy Clerk.

\* Insert "United States," or "defendant" as the case may be.

## RETURN

Received this subpoena at Farmingdale, N.Y. on March 6, 1975 at 3:30 p.m.  
and on March 6, 1975 at 10:15 a.m.  
served it on the within named Witness  
by delivering a copy to SERVICE OF THE COURT and tendering to  
age allowed by law. the fee for one day's attendance and the mile-

Dated:

IS HEREBY ADMITTED

March 6, 1975

By

[Signature]  
Anthony J. Fischer Jr.  
Asst Secretary

Service Fees

Travel ----- \$

Services -----

- 30 -

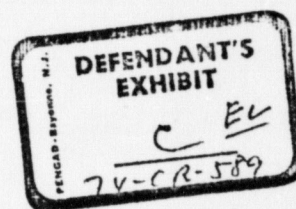
Fairchild Technologies Inc.



# United States District Court

FOR THE

EASTERN DISTRICT OF NEW YORK



UNITED STATES OF AMERICA

DOCKET  
No. 74-CR-589

v.

JOSEPH RACKER

To MARTIN MARIETTA CORPORATION, 277 Park Avenue, New York, New York,  
by an officer servant, agent or employee having knowledge and pos-  
session or control and possession of the records and transactions  
hereinafter enumerated:  
You are hereby commanded to appear in the United States District Court for the Eastern

District of New York at 225 Cadman Plaza East, Brooklyn, in the city of  
New York on the 14th day of March 1975 at 9:30 o'clock A.M.

to testify in the case of United States v. Joseph Racker and bring with you  
all pre-contract advertisements; invitations, correspondence, proposals  
memoranda, submissions and last and final offers between the U.S. Navy  
and Martin Marietta Corp. re: design, production and development of EA6,  
A2F1 and E2 or their precursors; including all books, records, memoranda,  
etc. relative thereto.

This subpoena is issued upon application of the defendant.

March 6, 1975.

Lubkin, Cohen & Stracher  
Attorney for defendant  
3000 Marcus Avenue, Lake Success, N.Y.  
Address Tel No. (516) 437-5900

LEWIS ORGER  
By *[Signature]* Clerk.  
Deputy Clerk.

\* Insert "United States," or "defendant" as the case may be.

## RETURN

Received this subpoena at \_\_\_\_\_ on \_\_\_\_\_  
and on \_\_\_\_\_ at \_\_\_\_\_  
served it on the within named \_\_\_\_\_ and tendering to \_\_\_\_\_ the fee for one day's attendance and the mile-  
age allowed by law.

Dated: \_\_\_\_\_

By \_\_\_\_\_

Service Fees

Travel ----- \$  
Services -----

# United States District Court

## FOR THE

### EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

JOSEPH RACKER

DOCKET

No. 74-CR-589

To BELL AEROSPACE CORPORATION, 120 Broadway, Room 332, New York, New York,  
by an officer servant, agent or employee having knowledge and pos-  
session or control and possession of the records and transactions  
hereinafter enumerated:

You are hereby commanded to appear in the United States District Court for the Eastern

District of New York at 225 Cadman ~~xx~~ Plaza East, Brooklyn, in the city of  
New York on the 14th day of March 1975 at 9:30 o'clock A.M.

to testify in the case of United States v. Joseph Racker and bring with you  
all pre-contract advertisements; invitations, correspondence, proposals  
memoranda, submissions and last and final offers between the U.S. Navy  
and Bell Aerospace Corp. re: design, production and development of A2F1,  
E2 and EA6 or their precursors; including all books, records, memoranda,  
etc. relative thereto.

This subpoena is issued upon application of the defendant.

March 6, 1975.

Lubkin, Cohen &amp; Stracher

Attorney for defendant

3000 Marcus Avenue, Lake Success, N.Y.

Address

Tel No. (516) 437-5900

<sup>1</sup> Insert "United States," or "defendant" as the case may be.

JESUS ORGEM  
Clerk.  
Deputy Clerk.

### RETURN

Received this subpoena at \_\_\_\_\_ on \_\_\_\_\_  
and on \_\_\_\_\_ at \_\_\_\_\_  
served it on the within named \_\_\_\_\_  
by delivering a copy to \_\_\_\_\_ and tendering to \_\_\_\_\_ the fee for one day's attendance and the mile-  
age allowed by law.

Dated: \_\_\_\_\_

\_\_\_\_\_, 19 \_\_\_\_

By \_\_\_\_\_

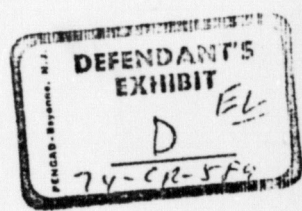
Service Fees

Travel \_\_\_\_\_ \$  
Services \_\_\_\_\_



HE-3062 1049AM TDMT PROVIDENCE RI 03-13 0923A EDT

PMS LUBKIN, COHEN AND STRACHER, ATTN RICHARD L STRACHER  
DLR 3000 MARCUS AVE LAKE SUCCESS NY  
RE USA VS. JOSEPH RACKER US DISTRICT COURT, EASTERN DISTRICT  
OF NEWYORK DOCKET #74-CR-589 IN RESPONSE TO YOUR SUBPEONA  
DATED MARCH 6 1975 ISSUED TO BELL AEROSPACE CORPORATION  
WITH RESPECT TO THE ABOVE CAPTIONED PROCEEDINGS, PLEASE BE ADVISED  
THAT WE HAVE MADE A THOROUGH SEARCH OF OUR RECORDS AND HAVE  
DETERMINED THAT WE HAVE NO RECORDS WHICH WOULD BE SUBJECT  
TO THE SUBJECT SUBPEONA. PLEASE BE FURTHER  
ADVISED THAT TO THE BEST OF OUR KNOWLEDGE NEITHER  
TEXTRON INC, BELL AEROSPACE CORPORATION NOR ITS  
PREDECESSOR IN INTEREST EVER ENGAGED IN THE SUBJECT MATTER  
OF THE SUBPEONA.  
TEXTRON INC. ( TRANSFEREE OF BELL AEROSPACE CORPORATION)



C V JOHANSEN STAFF ATTORNEY

This subpoena is issued upon application of the' defendant.

March 6, 19 75.  
Lubkin, Cohen & Stracher  
Attorney for defendant  
3000 Marcus Avenue, Lake Success, N.Y.  
Address Tel No. (516) 437-5900

By [Signature] Clerk.  
[Signature] Deputy Clerk.

\* Insert "United States," or "defendant" as the case may be.

RETURN

Received this subpoena at \_\_\_\_\_ on \_\_\_\_\_  
and on \_\_\_\_\_ at \_\_\_\_\_  
served it on the within named \_\_\_\_\_  
by delivering a copy to \_\_\_\_\_ and tendering to \_\_\_\_\_ the fee for one day's attendance and the mile-  
age allowed by law.\*

Dated: \_\_\_\_\_  
\_\_\_\_\_, 19 \_\_\_\_\_ By \_\_\_\_\_

Service Fees  
Travel \_\_\_\_\_ \$  
Services \_\_\_\_\_  
- 33 -



Telegram

HEA063(0940)(1-005877A072)PD 03/13/75 0935

X WU TFC C LSA

ZC 001 TDLS BURBANK CA 231 03-12 1120P PDT  
S LUBKIN, CHOEN & STRACHER ATTORNEYS AT LAW  
TENTION MR. LUBKIN /PHONE /516/ 437-5900/  
OO MARCUS AVENUE LAKE SUCCESS NEW YORK

IS WILL CONFIRM OUR TELEPHONE CONVERSATION OF MARCH  
, 1975, REGARDING THE RESPONSE OF LOCKHEED AIRCRAFT  
RPORATION TO THE SUBPENA DUCES TECUM ISSUED AND  
D SERVED ON LOCKHEED AIRCRAFT CORPORATION ON BEHALF  
DEFENDANT JOSEPH RACKER IN THE MATTER ENTITLED  
ITED STATES OF AMERICA V. JOSEPH RACKER PENDING IN  
E U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF  
W YORK (DOCKET NO. 74-CR-589) CONCERNING RECORDS,  
C. IN THE POSSESSION OF LOCKHEED AIRCRAFT CORP.

1 (RS-89)

Telegram

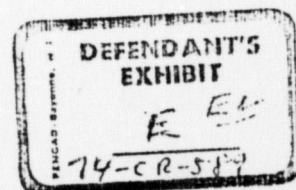
RTAINING TO THE DESIGN, DEVELOPMENT AND PRODUCTION  
US. S. NAVY AIRCRAFT DESIGNATED EAG, A2F1 AND E2.

I RELATED TO YOU BY TELEPHONE, AN EXTENSIVE  
HVASSING OF OFFICES

D PERSONNEL WITHIN THE LOCKHEED AIRCRAFT CORP. STRUCTURE,  
TH IN BURBANK, CALIFORNIA AND ELSEWHERE, REVEALS THAT LOCKHEED  
S NO RECORDS, ETC. CONCERNING THE NAVY AIRCRAFT AS DESIGNATED BY  
E SUBPENA, INCLUDING THE A-6 IN WHICH YOU EXPRESSED  
RTICULAR INTEREST. THIS NEGATIVE RESPONSE TO YOUR  
PENNA IS THE BEST THAT CAN BE PROVIDED BY LOCKHEED  
RCAFT CORP., PARTICULARLY IN LIGHT OF THE TIME  
EN ANY RECORDS, ETC. WOULD NECESSARILY HAVE BEEN GENERATED  
957-1958).

# Telegram

INDICATED ON THE TELEPHONE THAT THE FOREGOING  
PONSE SATISFIED YOU AND THAT YOU WOULD PRESENT  
S WIRE TO THE JUDGE ASSIGNED TO THE MATTER FOR HIS  
SIDERATION WITHOUT YOU SEEKING ANY FURTHER  
FIRMATIVE ACTION ON THE PART OF LOCKHEED AIRCRAFT  
RP. THANK YOU FOR YOUR COOPERATION IN THIS MATTER.

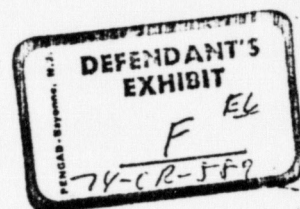


A SULLIVAN  
SOCIATE COUNSEL  
CKHEED AIRCRAFT CORPORATION BURBANK CALIF  
NN

01 (RS-89)



**United States District Court**  
FOR THE  
**EASTERN DISTRICT OF NEW YORK**



UNITED STATES OF AMERICA

DOCKET  
No. 74-CR-589

v.

JOSEPH RACKER

To NORTH AMERICAN ROCKWELL CORPORATION, c/o The Corporate Trust Company,  
277 Park Ave., New York, New York, by an officer servant, agent or  
employee having knowledge and possession or control and possession  
of the records and transactions hereinafter enumerated:  
You are hereby commanded to appear in the United States District Court for the Eastern

District of New York at 225 Cadman Plaza East, Brooklyn, in the city of  
New York on the 14th day of March 1975 at 9:30 o'clock A.M.

to testify in the case of United States v. Joseph Racker and bring with you  
all pre-contract advertisements; invitations, correspondence, proposals  
memoranda, submissions and last and final offers between the U.S. Navy  
and North American Rockwell Corp. re: design, production and development  
EA6, A2F1 and E2 or their precursors; including all books, records, mem-  
oranda, etc. relative thereto.

This subpoena is issued upon application of the defendant.

March 6, 1975

Lubkin, Cohen & Stracher

Attorney for defendant

3000 Marcus Avenue, Lake Success, N.Y.

Address

Tel. No. (516) 437-5900

\* Insert "United States," or "defendant" as the case may be.

By

Clerk.

Deputy Clerk.

**RETURN**

Received this subpoena at \_\_\_\_\_ on \_\_\_\_\_  
and on \_\_\_\_\_ at \_\_\_\_\_  
served it on the within named \_\_\_\_\_  
by delivering a copy to \_\_\_\_\_ and tendering to \_\_\_\_\_ the fee for one day's attendance and the mile-  
age allowed by law.

Dated: \_\_\_\_\_

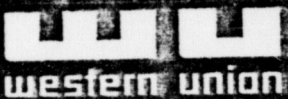
\_\_\_\_\_, 19 \_\_\_\_

By \_\_\_\_\_

Service Fees

Travel \_\_\_\_\_ \$  
Services \_\_\_\_\_





# Telegram

HEA135(1059)(1-013176C077003)PD 03/18/75 1053

X RI COL DIV COL

ZC 07 PD COLUMBUS OHIO MARCH

MS LUBKIN, COHEN AND STRACHER

ATTN: MR. LUBKIN *3000 Marcas Ave*

LAKE SUCCESS, NEW YORK 11040

LO1854 CONFIRMING OUR TELECON OF MARCH 17, 1975, *IN* TIME *TO BE*  
RELATIVE TO SUBPOENA OF MARCH 6, 1975, IN CONNECTION *1244* *mail*  
WITH U.S. VERSUS RACKER, WE HAVE BEEN UNABLE TO LOCATE  
ANY RECORDS OF THE TYPE DESCRIBED IN SUCH SUBPOENA  
PERTAINING TO ANY INVOLVEMENT BY ROCKWELL AS RELATED  
TO THE DESIGNATED AIRCRAFT. AS A RESULT, WE WILL BE  
UNABLE TO FURNISH ANY RECORDS RELATIVE TO SAID  
SUBPOENA.

ROCKWELL INTERNATIONAL CORPORATION

201 (R5-69)



# Telegram

COLUMBUS AIRCRAFT DIVISION

L. L. WOOD - MANAGER

CONTRACTS AND SPECIFICATIONS

-18-75 1144A JR

NNN

201 (R5-69)

## United States District Court

FOR THE

EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

JOSEPH RACKER

DOCKET

No. 74-CR-589

To LOCKHEED AIRCRAFT CORPORATION, c/o The Corporate Trust Company, 277 Park Avenue, N.Y., N.Y., by an officer servant, agent or employee having knowledge and possession or control and possession of the records and transactions hereinafter enumerated:

You are hereby commanded to appear in the United States District Court for the Eastern District of New York at 225 Cadman Plaza East, Brooklyn, in the city of New York on the 14th day of March 1975 at 9:30 o'clock A.M.

to testify in the case of United States v. Joseph Racker and bring with you all pre-contract advertisements; invitations, correspondence, proposals memoranda, submissions and last and final offers between the U.S. Navy and Lockheed Aircraft Corp. re: design, production and development of A2F1 and E2 of their precursors; including all books, records, memoranda, etc. relative thereto.

This subpoena is issued upon application of the defendant.

March 6, 1975.

Lubkin, Cohen & Stracher  
Attorney for defendant  
3000 Marcus Avenue, Lake Success, N.Y.  
Address Tel No. (516) 437-5900

By

Clerk.

Deputy Clerk.

\* Insert "United States," or "defendant" as the case may be.

## RETURN

Received this subpoena at \_\_\_\_\_ on \_\_\_\_\_  
and on \_\_\_\_\_ at \_\_\_\_\_  
served it on the within named \_\_\_\_\_  
by delivering a copy to \_\_\_\_\_ and tendering to \_\_\_\_\_ the fee for one day's attendance and the mileage allowed by law.\*

Dated: \_\_\_\_\_

By \_\_\_\_\_

Service Fees

Travel \_\_\_\_\_ \$  
Services \_\_\_\_\_



# United States District Court

FOR THE

EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

JOSEPH RACKER

DOCKET

No. 74-CR-589

To BOEING AIRPLANE COMPANY, 120 Broadway, Room 332, New York, New York,  
by an officer servant, agent or employee having knowledge and pos-  
session or control and possession of the records and transactions  
hereinafter enumerated:

You are hereby commanded to appear in the United States District Court for the Eastern  
District of New York at 225 Cadman ~~xx~~ Plaza East, Brooklyn, in the city of  
New York on the 14th day of March 1975 at 9:30 o'clock A.M.

to testify in the case of United States v. Joseph Racker and bring with you  
all pre-contract advertisements; invitations, correspondence, proposals  
memoranda, submissions and last and final offers between the U.S. Navy  
and Boeing Airplane Company re: design, production and development of  
A6, A2F1 and E2 or their precursors; including all books, records, mem-  
oranda, etc. relative thereto.

This subpoena is issued upon application of the defendant.

March 6, 1975.

Lubkin, Cohen & Stracher

Attorney for defendant

3000 Marcus Avenue, Lake Success, N.Y.

Address Tel. No. (516) 437-5900

LEWIS ORGEL

Clerk.

By

Deputy Clerk.

\* Insert "United States," or "defendant" as the case may be.

## RETURN

Received this subpoena at \_\_\_\_\_ on \_\_\_\_\_  
and on \_\_\_\_\_ at \_\_\_\_\_  
served it on the within named \_\_\_\_\_  
by delivering a copy to \_\_\_\_\_ and tendering to \_\_\_\_\_ the fee for one day's attendance and the mile-  
age allowed by law.

Dated: \_\_\_\_\_

\_\_\_\_\_, 19 \_\_\_\_

By \_\_\_\_\_

Service Fees

Travel \_\_\_\_\_ \$  
Services \_\_\_\_\_



**western union**

**Telegram**

HEE235(1830)(1-041026A085)PD 03/26/75 1827

K PERKINS SEA

ZC 001 SEATTLE, WASHINGTON MARCH 26, 1975

S LUBKIN, COHEN AND STRACHER

O MARCUS AVENUE

KE SUCCESS, NEW YORK *1102f*

LEPHONE (516) 437-5900

RE: USA V. JOSEPH RACKER

IS WILL ADVISE THAT A SEARCH MADE OF THE RECORDS AND FILES  
OF THE BOEING COMPANY WHEREIN DOCUMENTS OF THE TYPE DESCRIBED  
IN THE SUBPOENA SERVED ON BOEING IN THIS CASE ON MARCH 7,  
1975 WOULD NORMALLY BE FOUND HAS FAILED TO DISCLOSE ANY DOCU-  
MENTS OF THE TYPE DESCRIBED IN SUCH SUBPOENA.

PERKINS, COIE, STONE,

(RS-60)

437-5900 TO *me*

*HOA*

*1007A*

*Rept*

*WC*

*Bray TAKI*

**western union**

**Telegram**

OLSEN & WILLIAMS  
GENERAL COUNSEL FOR  
THE BOEING COMPANY

LEX 320319

NN

# United States District Court

FOR THE

EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

DOCKET  
No. 74-CR-589

v.

JOSEPH RACKER

SECRETARY OF THE UNITED STATES NAVY, Washington, D.C.

You are hereby commanded to appear in the United States District Court for the Eastern District of New York at 225 Cadman ~~at~~ Plaza East, Brooklyn, in the city of New York on the 14th day of March 1975 at 9:30 o'clock A.M.

and bring with you to testify in the case of United States v. Joseph Racker pre-contract advertisement, invitations, correspondence, proposals, mem- da, submissions, last and final offers between the U.S. Navy and Bell Aerospace Corporation, Boeing Airplane Company, McDonnell Douglas Corporation Aerospace Corporation, Lockheed Aircraft Corporation, Grumman Aerospace Corporation, North American Rockwell Corporation, Martin Marietta Corporation Child Republic Company Re: design, production and development of A2F1, E2 and EA6 or their precursors, including all books, records, memoranda relative thereto; all contracts and amendments thereto resulting from foregoing.

This subpoena is issued upon application of the defendant.

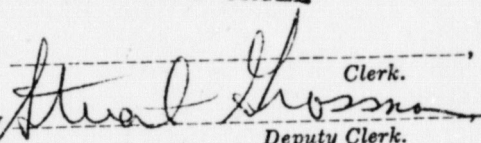
March 6, 19 75.

Lubkin, Cohen & Stracher  
Attorney for  
3000 Marcus Ave., Lake Success, N.Y.  
Address

Tel. No. (516) 437-5900

\* Insert "United States," or "defendant" as the case may be.

LEWIS ORGEL

By  Clerk.  
Deputy Clerk.

## RETURN

Received this subpoena at \_\_\_\_\_ on \_\_\_\_\_ at \_\_\_\_\_ and tendering to \_\_\_\_\_ the fee for one day's attendance and the mile-  
age allowed by law.

Dated: \_\_\_\_\_, 19 \_\_\_\_\_ By \_\_\_\_\_

Service Fees  
Travel \_\_\_\_\_\$  
Services \_\_\_\_\_



pling, which transferred part of its functions and part of the functions of its Chairman to the Federal Maritime Board and the Chairman thereof, that Board having been created by that Plan as an agency within the Department of Commerce with an independent status in some respects, and transferred the remainder of that Commission's functions and the functions of its Chairman to the Secretary of Commerce, with power vested in the Secretary to authorize their performance by the Maritime Administrator, the head of the Maritime Administration, which likewise was established by the

Plan in the Department of Commerce with the provision that the Chairman of the Federal Maritime Board should, ex officio, be that Administrator.

Section 304 of 1961 Reorg. Plan No. 7, eff. Aug. 12, 1961, 26 F.R. 7315, 75 Stat. 840, set out as a note under section 1332-15 of Title 5, abolished the Federal Maritime Board, including the offices of the members of the Board. Functions of the Board were transferred either to the Federal Maritime Commission or to the Secretary of Commerce by sections 103 and 202 of 1961 Reorg. Plan No. 7.

**§ 51. Fees or kick-backs by subcontractors on negotiated contracts; recovery by United States; conclusive presumptions; withholding of payments**

The payment of any fee, commission, or compensation of any kind or the granting of any gift or gratuity of any kind, either directly or indirectly, by or on behalf of a subcontractor, as defined in section 52 of this title, (1) to any officer, partner, employee, or agent of a prime contractor holding a negotiated contract entered into by any department, agency, or establishment of the United States for the furnishing of supplies, materials, equipment or services of any kind whatsoever; or to any such prime contractor or (2) to any officer, partner, employee, or agent of a higher tier subcontractor holding a subcontract under the prime contract, or to any such subcontractor either as an inducement for the award of a subcontract or order from the prime contractor or any subcontractor, or as an acknowledgment of a subcontract or order previously awarded, is prohibited. The amount of any such fee, commission, or compensation or the cost or expense of any such gratuity or gift, whether heretofore or hereafter paid or incurred by the subcontractor, shall not be charged, either directly or indirectly, as a part of the contract price charged by the subcontractor to the prime contractor or higher tier subcontractor. The amount of any such fee, cost, or expense shall be recoverable on behalf of the United States from the subcontractor or the recipient thereof by setoff of moneys otherwise owing to the subcontractor either directly by the United States, or by a prime contractor under any contract or by an action in an appropriate court of the United States. Upon a showing that a subcontractor paid fees, commissions, or compensation or granted gifts or gratuities to an officer, partner, employee, or agent of a prime contractor or of another higher tier subcontractor, in connection with the award of a subcontract or order thereunder, it shall be conclusively presumed that the cost of such expense was included in the price of the subcontract or order and ultimately borne by the United States. Upon the direction of the contracting department or agency or of the General Accounting Office, the prime contractor shall withhold from sums otherwise due a subcontractor any amount reported to have been found to have been paid by a subcontractor as a fee, commission, or compensation or as



In action by United States to recover amounts paid by subcontractors to prime contractors having cost-plus contracts with War Shipping Administration, or to employees of one of the prime contractors, evidence disclosed that payments were made either as inducements for awards of subcontracts or as acknowledgment of subcontracts previously awarded in violation of this section. U. S. v. Gemmell, D. C.Pa.1958, 160 F.Supp. 792.

In action by United States to recover under this section, evidence was insuffi-

cient to establish that principal defendants' wives were partners with principal defendants in business. U. S. v. Davio, D.C.Mich.1955, 136 F.Supp. 423.

#### 14. Joint and several liability

Where subcontractor made payments to employees of prime contractor having cost-plus contract with War Shipping Administration, in violation of this section, payees and payor were jointly and severally liable to the United States for amount of payments made. U. S. v. Gemmell, D.C.Pa.1958, 160 F.Supp. 792.

### § 52. Same; definitions

For the purpose of sections 51-54 of this title, the term "subcontractor" is defined as any person, including a corporation, partnership, or business association of any kind, who holds an agreement or purchase order to perform all or any part of the work or to make or to furnish any article or service required for the performance of a negotiated contract or of a subcontract entered into thereunder; the term "person" shall include any subcontractor, corporation, association, trust, joint-stock company, partnership, or individual; and the term "negotiated contract" means made without formal advertising. Mar. 8, 1946, c. 80, § 2, 60 Stat. 38; Sept. 2, 1960, Pub.L. 86-695, 74 Stat. 740.

Library references: United States 75; C.J.S. United States § 103.

#### Historical Note

1960 Amendment. Pub.L. 86-695 substituted "negotiated contract" for "cost-plus-a-fixed-fee or cost reimbursable contract" in the definition of "subcontractor" and defined the term "negotiated contract."

Legislative History: For legislative history and purpose of Pub.L. 86-695, see 1960 U.S.Code Cong. and Adm.News, p. 3292.

### § 53. Same; power of General Accounting Office

For the purpose of ascertaining whether such fees, commissions, compensation, gifts, or gratuities have been paid or granted by a subcontractor, the General Accounting Office shall have the power to inspect the plants and to audit the books and records of any prime contractor or subcontractor engaged in the performance of a negotiated contract. Mar. 8, 1946, c. 80, § 3, 60 Stat. 38; Sept. 2, 1960, Pub.L. 86-695, 74 Stat. 741.

Library references: United States 75; C.J.S. United States § 103.

#### Historical Note

1960 Amendment. Pub.L. 86-695 substituted "negotiated contract" for "cost-plus-a-fixed-fee or cost reimbursable contract."

Legislative History: For legislative history and purpose of Pub.L. 86-695, see 1960 U.S.Code Cong. and Adm.News, p. 3292.

## § 54. Same; penalties

Any person who shall knowingly, directly or indirectly, make or receive any such prohibited payment, shall be fined not more than \$10,000 or be imprisoned for not more than two years, or both. Mar. 8, 1946, c. 80, § 4, 60 Stat. 38; Sept. 2, 1960, Pub.L. 86-695, 74 Stat. 741.

## Historical Note

1960 Amendment. Pub.L. 86-695 reenacted section without change.

Legislative History: For legislative history and purpose of Pub.L. 86-695, see 1960 U.S. Code Cong. and Adm. News, p. 3292

## Notes of Decisions

Elements of offenses 1  
Evidence 3  
Indictments 2

## Library references

Bribery § 1(1).  
C.J.S. Bribery § 1, 2.

## 1. Elements of offenses

The gist of crime under section 51 of this title is receipt of a prohibited payment with knowledge that it is made for purpose of inducing the award of a subcontract, and whether recipient actually induces the award of subcontract is irrelevant; section 51 of this title forbids the purchase of good will in contracting process. *Howard v. U. S.*, C.A. Mass. 1965, 345 F.2d 126.

The essential elements of crime defined by section 51 of this title are that parties be within the class covered by section 51 of this title, a contract covered by section 51 of this title, and an acceptance of a prohibited payment with knowledge of its nature and purpose. *Id.*

Sections 51-54 of this title do not require a showing of a specific criminal intent to induce or influence the award of particular subcontracts, but criminal intent is an essential element of offense and conviction cannot be had on mere appearance of guilt. *Id.*

The offenses proscribed by section 51 of this title precluding payment of commissions or gratuities by or on behalf of subcontractor to any officer, employee or agent of prime Government contractor operating under cost-reimbursable contract or receipt by such persons of commissions or gratuities and of conspiracy to commit such offenses do not have as a substantive element knowledge on part of defendants that contractor was operating under a cost-reimbursable contract. *Hanis v. U. S.*, C.A. Mo. 1967, 246 F.2d 781.

Under section 51 of this title prohibiting payment to or receipt by officer or agent of prime Government contractors, operating under cost-reimbursable contracts, of any fees or commissions by subcontractors, proof that contracts are cost-reimbursable type is necessary only to establish federal jurisdiction and defendant's knowledge that the contracts were compensable upon a cost-reimbursable arrangement is not an element of offense and need neither be pleaded nor proved. *Id.*

Two of essential elements of violations of section 51 of this title are the existence of a cost-plus-a-fixed-fee contract with United States and the making or receiving of a payment prohibited by such section 51 in connection with such a contract. *U. S. v. Dobar*, D.C. Fla. 1963, 223 F.Supp. 8.

## 2. Indictments

Where prime contract between prime contractor and the United States Air Force contained several references to its being a fixed-price contract and provided in each instance specified unit prices for various units of aircraft and parts produced, but provisions thereof contemplated that in course of renegotiation and revision in prices for items delivered, reimbursement for costs incurred would be made in some instances, prime contract was not exclusively a "fixed price contract" as distinguished from a "cost reimbursable contract" within meaning of former provision of section 51 of this title forbidding kick-backs by subcontractors on cost-plus-a-fixed-fee or "cost reimbursable," and indictments alleging a conspiracy to violate such section by employees of prime contractor and subcontractors were sufficient. *U. S. v. Barnard*, C.A. Kan. 1958, 255 F.2d 583, certiorari denied 79 S.Ct. 257, 358 U.S. 919, 3 L.Ed. 2d 238.



## CHAPTER 135.—ENCOURAGEMENT OF AVIATION

Sec.

- 2271. Design competitions: advertisement; selection of winner.
- 2272. Design competitions: rejection or purchase of designs; contracts; conditions.
- 2273. Right of United States to design; right of designer to patent; right to sue United States.
- 2274. Procurement for experimental purposes.
- 2275. Contracts; review of decisions.
- 2276. Inspection and audit of plant and books of contractor; criminal provisions.
- 2277. Appropriations; availability.
- 2278. Purchase of sample aircraft.
- 2279. Aircraft: restrictions on alien employees of contractor.

### § 2271. Design competitions: advertisement; selection of winner

(a) To encourage the development of aviation and to improve the efficiency of aeronautical war material for the Army, Navy, Air Force, and Marine Corps, the Secretary of each military department, before procuring new designs of aircraft, aircraft parts, or aeronautical accessories, shall invite the submission of new designs thereof in competition, as follows.

(b) An invitation for the submission of a design shall be made by advertisement in not less than three leading aeronautical journals for a period of 30 days, and in such other manner as the Secretary of the military department concerned considers advisable. Such an advertisement shall specify a time within which designs and prices may be submitted. This time may not be less than 60 days after the expiration of the 30-day advertising period. Each submission shall be sealed and shall contain the design submitted, a statement of the price for which the design or any part of it would be sold to the United States, and a graduated scale of prices for which the designer is willing to construct all or any part of a designed item. The submission shall be kept sealed until the expiration of the specified time. No design mailed after that time may be considered.

(c) Each advertisement under subsection (b) shall state in general terms the kind of aircraft, aircraft parts, or aeronautical accessories to be developed and the approximate quantity required. The department concerned shall furnish to each applicant identical detailed information as to the conditions of the competition and the features and characteristics to be developed in the design, listing specifically the measures of merit, expressed in percentages, that are to be applied in determining the merits of the design. These measures of merit apply throughout the competition.

T. 10 U.S.C.A. §§ 951-3000-26

# 10 § 2271

## GENERAL MILITARY LAW

Subt. A

(d) Each design submitted under subsection (b) shall be referred to a board appointed by the Secretary of the military department concerned. The board shall appraise each design as soon as practicable and report the winners to the Secretary. If the Secretary approves the board's report, he shall fix the time and place of a public announcement of the results and notify each competitor. If the Secretary does not approve it, the papers may be returned to the board for revision, or he may choose the winners, as he elects. The decision of the Secretary is final and conclusive. The announcement of the results of the competition shall state the percentages awarded to each feature or characteristic of each of the designs submitted and the price named for each design and each feature thereof, if separable.

(e) If, within 10 days after the announcement of the results of a competition under subsection (d), a competitor makes a reasonable showing in writing to the Secretary of the military department concerned that an error was made in determining the merits of designs submitted and that he was thereby deprived of an award, the Secretary shall at once refer the matter to a board of arbitration for determination. The board of arbitration shall be composed of three skilled aeronautical engineers, one of whom shall be selected by the Secretary, one by the claimant, and the third by the other members. No person may be a member of a board of arbitration if he served on the board of appraisal that judged the competition out of which the arbitration arose. The findings of the board are conclusive if approved by the Secretary. In a competition, three competitors, or less, who have the highest figures of merit may be selected as winners.

Aug. 10, 1956, c. 1041, 70A Stat. 123.

### Historical and Revision Notes

Revised Section	Source (U. S. Code)	
2271(a)	10:310(a) (1st 46, 74th through 78th, and 82d through 91st, words)	the Army or the Navy Department, as the case may be", and "received or" are omitted as surplusage. The words "United States" are substituted for the word "Government". The last clause of the fourth sentence is substituted for 10:310(e) (less last 17 words).
2271(b)	10:310(a) (less 1st 46, 74th through 78th, and 82d through 91st, words)	
	10:310(b) (1st sentence)	In subsection (c), the words "aircraft", "aeronautical", and "in the design" are inserted for clarity. The words "number or", "specific", "and requirements", "various", and "respective" are omitted as surplusage. The word "apply" is substituted for the words "shall be adhered to".
2271(c)	10:310(e) (less last 17 words)	
2271(d)	10:310(b) (less 1st and 2d sentences)	In subsection (d), the words "for that purpose", "by each competitor", and "or winners" are omitted as surplusage. The word "may" is substituted for the words "shall * * * in his discretion". The words "submitted under subsection (b)" are substituted for the words "re-
2271(e)	10:310(h), (s)	

#### Source (Statutes at Large)

July 2, 1926, ch. 721, § 10(a), (b), (e) (less last 17 words), (h), (s), 44 Stat. 784-786, 788.

#### Explanatory Notes

In subsection (b), the words "sufficient", "carefully", "in the Department of



## CHAPTER 137.—PROCUREMENT GENERALLY

Sec.

- 2301. Declaration of policy.
- 2302. Definitions.
- 2303. Applicability of chapter.
- 2304. Purchases and contracts: advertising; exceptions.<sup>1</sup>
- 2305. Formal advertisements for bids; time; opening; award; rejection.
- 2306. Kinds of contracts.
- 2307. Advance payments.
- 2308. Assignment and delegation of procurement functions and responsibilities.
- 2309. Allocation of appropriations.
- 2310. Determinations and decisions.
- 2311. Delegation.
- 2312. Remission of liquidated damages.
- 2313. Examination of books and records of contractor.
- 2314. Laws inapplicable to agencies named in section 2303 of this title.

<sup>1</sup> So in original. Does not conform to section catchline.

### Cross References

American material required for public use, see section 10a of Title 41, Public Contracts.  
Cataloging and standardization of supplies, see section 2451 et seq. of this title.  
Experimental purposes, procurement for; chapter as applicable, see sections 4504, 9504 of this title.  
Miscellaneous procurement provisions, see section 2381 et seq. of this title.  
Particular provisions relating to—  
    Air Force, see section 9531 et seq. of this title.  
    Army, see section 4531 et seq. of this title.  
    Navy, see section 7521 et seq. of this title.

### § 2301. Declaration of policy

It is the policy of Congress that a fair proportion of the purchases and contracts made under this chapter be placed with small business concerns.

Aug. 10, 1956, c. 1041, 70A Stat. 127.

### Historical and Revision Notes

Revised Section	Source (U. S. Code)	Explanatory Notes
2301	41:151(b) (1st sentence)	The words "under this chapter" are substituted for the words "for supplies and services for the Government". The words "declared" and "total" are omitted as surplusage.
	Source (Statutes at Large)	
	Feb. 19, 1948, ch. 65, § 2(b) (1st sentence), 62 Stat. 21.	

### Library References

United States ⚔55.

C.J.S. United States §§ 71, 73.

**Code of Federal Regulations**

Armed forces procurement regulations, see 32 CFR 1.100 et seq.  
 Army procurement procedure, appendix, see 32 CFR 616.1 et seq.  
 Defense supply procurement regulations, see 32 CFR 1201.101 et seq.  
 Purchases and contracts made by Army Department for procurement of supplies or services, see 32 CFR 591.101 et seq.  
 Small business concerns.  
     Generally, see 32 CFR 1.700 et seq., 1201.705 et seq.  
     Army Department, see 32 CFR 591.704 et seq.  
     Transportation Department, see 41 CFR 12-1.701 et seq.  
 Transportation Department procurement regulations, see 41 CFR 12-1.001 et seq.

**Notes of Decisions****1. Purpose**

Fundamental government procurement statutes for general public contracts, or for military procurements, were designed not to protect bidders but rather to protect the government. *Gary Aircraft Corp. v. U. S.*, D.C.Tex.1972, 342 F.Supp. 473.

**§ 2302. Definitions**

In this chapter—

(1) "Head of an agency" means the Secretary, the Under Secretary, or any Assistant Secretary, of the Army, Navy, or Air Force; the Secretary of the Treasury; or the Administrator of the National Aeronautics and Space Administration.

(2) "Negotiate" means make without formal advertising.

(3) "Formal advertising" means advertising as prescribed by section 2305 of this title.

Aug. 10, 1956, c. 1041, 70A Stat. 127; July 29, 1958, Pub.L. 85-568, Title III, § 301(b), 72 Stat. 432; Sept. 2, 1958, Pub.L. 85-861, § 1(43A), 72 Stat. 1457.

**Historical and Revision Notes**

<b>Revised Section</b>	<b>Source (U. S. Code)</b>	those functions to the agencies and employees of the Department of the Treasury.
2302	41:158 (less clause (b))	

**Source (Statutes at Large)**

Feb. 19, 1948, ch. 65, § 9 (less clause (b)), 62 Stat. 24.

**Explanatory Notes**

In clause (1), the words "(if any)" are omitted as surplusage. The words "Secretary of the Treasury" are substituted for the words "Commandant, United States Coast Guard, Treasury Department", since the functions of the Coast Guard and its officers, while operating under the Department of the Treasury, were vested in the Secretary of the Treasury by 1950 Reorganization Plan No. 26, effective July 31, 1950, 64 Stat. 1280. Under that plan the Secretary of the Treasury was authorized to delegate any of

Clauses (2) and (3) are inserted for clarity, and are based on the usage of those terms throughout the revised chapter.

**1958 Amendments.** Cl. (1). Pub.L. 85-568 substituted "Administrator of the National Aeronautics and Space Administration" for "Executive Secretary of the National Advisory Committee for Aeronautics".

Cl. (3). Pub.L. 85-861 substituted "section 2305 of this title" for "section 2305(a) and (b) of this title".

**Effective Date of 1958 Amendment.** Section 301(e) of Pub.L. 85-568 provided that: "This section [amending this sec-



## 10 § 2302 GENERAL MILITARY LAW

Subt. A

tion and section 2303(a)(5) of this title, former section 22-1 of Title 5, and sections 511 to 513 and 515 of Title 50, War and National Defense, and enacting note set out under section 2472 of Title 42, The Public Health and Welfare] shall take effect ninety days after the date of the enactment of this Act [July 29, 1958], or on any earlier date on which the Administrator [of the National Aeronautics and Space Administration] shall determine, and announce by proclamation published in the Federal Register, that the Administration has been organized and is prepared to discharge the duties and exercise the powers conferred upon it by this Act."

**Transfer of Functions.** The Coast Guard was transferred to the Department of Transportation and all functions, powers, and duties, relating to the Coast Guard, of the Secretary of the Treasury and of other offices and officers of the Department of the Treasury were transferred to the Secretary of Transportation by Pub.L. 89-670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(b) of Title 49, Transportation.

**Legislative History.** For legislative history and purpose of Pub.L. 85-568, see 1958 U.S.Code Cong. and Adm.News, p. 3169. See, also, Pub.L. 85-861, 1958 U.S. Code Cong. and Adm.News, p. 4615.

### § 2303. Applicability of chapter

(a) This chapter applies to the purchase, and contract to purchase, by any of the following agencies, for its use or otherwise, of all property named in subsection (b), and all services, for which payment is to be made from appropriated funds:

- (1) The Department of the Army.
- (2) The Department of the Navy.
- (3) The Department of the Air Force.
- (4) The Coast Guard.
- (5) The National Aeronautics and Space Administration.

(b) This chapter does not cover land. It covers all other property including—

- (1) public works;
- (2) buildings;
- (3) facilities;
- (4) vessels;
- (5) floating equipment;
- (6) aircraft;
- (7) parts;
- (8) accessories;
- (9) equipment; and
- (10) machine tools.

(c) The provisions of this chapter that apply to the procurement of property apply also to contracts for its installation or alteration. Aug. 10, 1956, c. 1041, 70A Stat. 128; July 29, 1958, Pub.L. 85-568, Title III, § 301(b), 72 Stat. 432.

## 10 § 2309

## GENERAL MILITARY LAW

Subt. A

## Historical and Revision Notes

## Revised

## Section

2309(a)

2309(b)

## Source (U. S. Code)

41:159 (2d sentence)

41:159 (less 1st and 2d sentences)

## Source (Statutes at Large)

Feb. 19, 1948, ch. 65, § 10 (less 1st sentence), 62 Stat. 25.

## Explanatory Notes

In subsection (a), the words "an agency named in section 2303 of this title" are substituted for the words "any such agency".

In subsection (b), the words "an allotment under subsection (a)" are substituted for the words "such allotments".

## § 2310. Determinations and decisions

(a) Determinations and decisions required to be made under this chapter by the head of an agency may be made for an individual purchase or contract or for a class of purchases or contracts. Such a determination or decision is final.

(b) Each determination or decision under clauses (11)-(16) of section 2304(a), section 2306(c), section 2306(r)(1), section 2307(c), or section 2313(c) of this title and a decision to negotiate contracts under clauses (2), (7), (8), (10), (12), or for property or supplies under clause (11) of section 2304(a), shall be based on a written finding by the person making the determination or decision, which finding shall set out facts and circumstances that (1) are clearly illustrative of the conditions described in clauses (11)-(16) of section 2304(a), (2) clearly indicate why the type of contract selected under section 2306(c) is likely to be less costly than any other type or that it is impracticable to obtain property or services of the kind or quality required except under such a contract, (3) support the findings required by section 2306(g)(1), (4) clearly indicate why advance payments under section 2307(c) would be in the public interest, (5) clearly indicate why the application of section 2313(b) to a contract or subcontract with a foreign contractor or foreign subcontractor would not be in the public interest, or (6) clearly and convincingly establish with respect to the use of clauses (2), (7), (8), (10), (12), and for property or supplies under clause (11) of section 2304(a), that formal advertising would not have been feasible and practicable. Such a finding is final and shall be kept available in the agency for at least six years after the date of the determination or decision. A copy of the finding shall be submitted to the General Accounting Office with each contract to which it applies.

Aug. 10, 1956, c. 1041, 70A Stat. 132; Aug. 28, 1958, Pub.L. 85-800, § 10, 72 Stat. 967; Sept. 10, 1962, Pub.L. 87-653, § 1(f), 76 Stat. 529; Sept. 27, 1966, Pub.L. 89-607, § 1(1), 80 Stat. 850; July 5, 1968, Pub.L. 90-378, § 2, 82 Stat. 290.



1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF NEW YORK

FILED  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT E.D. N.Y.  
★ MAR 20 1975 ★

3 -----x  
4 UNITED STATES OF AMERICA :

TIME AM.....  
PM.....

5 -against- :

74-CR-589

6 JOSEPH RACKER, :

7 Defendant. :  
8 -----x  
9

10 United States Courthouse  
11 Brooklyn, New York

12 January 21, 1975  
13 2:00 o'clock P.M.

14 B e f o r e :  
15

16 HONORABLE JACK B. WEINSTEIN, U.S.D.J.  
17  
18  
19  
20  
21  
22

23 HENRY SHAPIRO  
24 OFFICIAL COURT REPORTER  
25

I hereby certify that the foregoing is a  
true and correct copy of the original  
as filed in the  
U.S. District Court for the  
Eastern District of N.Y.  
2

1  
2 **Appearances:**

3  
4 DAVID G. TRAGER, ESQ.  
5 United States Attorney  
6 for the Eastern District of New York

7  
8 BY: RONALD DE PETRIS, ESQ.  
9 Assistant U.S. Attorney

10  
11 ARTHUR LUBKIN, ESQ.  
12 Attorney for Defendant  
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1 THE COURT: Criminal cause for pleading,  
2 United States of America versus Joseph Racker.

3 MR. DE PETRIS: Your Honor, we have reached a  
4 disposition in this case involving a plea of guilty  
5 to 6 counts: Counts 1, 4, 10, 16, 19 and 36 of the  
6 indictment.

7 Shall I read those off again?

8 THE COURT: Yes.

9 MR. DE PETRIS: 1, 4, 10, 16, 19, and 36.  
10 That is one conspiracy count and five substantive  
11 counts.

12 THE COURT: The conspiracy charge can be  
13 punishable by 5 years and \$10,000?

14 MR. DE PETRIS: That's correct, and the sub-  
15 stantives two years or \$10,000.

16 THE COURT: A total of 20 years and \$60,000?

17 MR. DE PETRIS: That is correct, your Honor.

18 How many years did your Honor say?

19 THE COURT: A total of 15 years.

20 MR. LUBKIN: 5 times 2, plus two is 15.

21 THE COURT: Are you Joseph Racker?

22 THE DEFENDANT: Yes.

23 THE COURT: How old are you, sir?

24 THE DEFENDANT: 52.

25 THE COURT: How much education have you had?

1 THE DEFENDANT: Well, I've had almost  
2 24 credits toward a Master's Degree at Brooklyn  
3 Polytech.

4 THE COURT: Have you ever been treated for any  
5 emotional problems?

6 THE DEFENDANT: No, sir.

7 THE COURT: Do you take drugs?

8 THE DEFENDANT: No, sir.

9 THE COURT: Are you under the influence of  
10 any intoxicating liquor?

11 THE DEFENDANT: No, sir.

12 THE COURT: Are you under any medication?

13 THE DEFENDANT: No, sir.

14 THE COURT: Is your mind clear?

15 THE DEFENDANT: Yes.

16 THE COURT: Has anybody made any threats or  
17 promises to induce you to plead guilty?

18 THE DEFENDANT: No, sir.

19 THE COURT: I take it that the other counts  
20 will be dismissed?

21 MR. DE PETRIS: Your Honor, there is an under-  
22 standing between the Government and Mr. Racker that  
23 has been reduced to writing. Perhaps we could mark  
24 the letter?

25 THE COURT: Have you read this letter?



1 MR. DE PETRIS: It has been read and signed,  
2 your Honor, by defense counsel and the defendant.

3 THE COURT: I will read it.

4 (Document shown to Court.)

5 THE COURT: Are you pleading guilty because  
6 you are guilty or because of this agreement?

7 THE DEFENDANT: Because I am guilty, your  
8 Honor.

9 THE COURT: You understand that you are entitled  
10 to an immediate trial and in fact a trial date has  
11 been set for you, correct?

12 THE DEFENDANT: Yes.

13 THE COURT: You were present during the trial  
14 of the defendant in a related case, were you not?

15 THE DEFENDANT: Yes.

16 THE COURT: You know how we operate, then.  
17 You are entitled to a presumption of innocence and  
18 the Government has to prove you're guilty beyond a  
19 reasonable doubt. You can have a jury trial and many  
20 other protections.

21 THE DEFENDANT: Yes.

22 THE COURT: You understand that?

23 THE DEFENDANT: Yes.

24 THE COURT: When you plead guilty, you cannot  
25 appeal. You cannot even appeal from the sentence;

1 is that clear?

2 THE DEFENDANT: Yes.

3 THE COURT: Have you gone through this  
4 thoroughly with your client?

5 MR. LUBKIN: Yes, your Honor.

6 THE COURT: Does he understand all the  
7 constitutional rights that he waives?

8 MR. LUBKIN: Yes, we have gone through with  
9 him at very great length.

10 THE COURT: Is he in your opinion capable of  
11 understanding the nature of this plea and its  
12 implications?

13 MR. LUBKIN: Yes, your Honor.

14 THE COURT: You are pleading guilty to a  
15 felony, you understand that?

16 THE DEFENDANT: Yes.

17 THE COURT: You will have difficulty getting  
18 Government contracts and other collateral consequences  
19 will follow. Do you understand that?

20 THE DEFENDANT: Yes.

21 THE COURT: Have you read these charges?

22 THE DEFENDANT: Yes.

23 THE COURT: Count 1, in substance, charges  
24 that you entered into a conspiracy with Angelo  
25 Claros in or around June of 1970 to pay fees and



7  
1 gratuities in behalf of United States Electronics  
2 Publications to employees of Grumman in return for  
3 help in getting contracts and payments were made at  
4 Tech-Write Services in connection with that arrange-  
5 ment in 1972, 1973 and 1974.

6 Count 4 charges that you gave Claros \$1,300  
7 as an inducement for the award of sub-contracts.

8 Count 10 charges in October of 1973, you gave  
9 Frank Munafo \$1,500 for the same purpose.

10 Count 16 charges that you gave Raggozzine  
11 \$1,350 for the same purpose, in May of 1973.

12 Count 19 charges that in October of 1972 you  
13 gave William Sheridan \$1,700 for the same purpose.

14 Count 36 charges that in February of 1972 you  
15 gave Thomas Toner \$1,500 for the same purpose.

16 You have been following these cases carefully  
17 I know because I have seen you in Court on a number  
18 of occasions. You know the general pattern of sen-  
19 tencing has been \$10,000 and a month in a community  
20 treatment center for eachone of these counts, and  
21 that is subject to the probation reports and hearing  
22 you on sentence and other factors. It is not a hard  
23 and fast pattern, but consistency of sentencing  
24 requires some kind of pattern in these kind of  
25 cases. I want to make sure that you are aware

1 because of these 6 counts you face a heavier  
2 penalty than those that pleaded guilty to one or  
3 two counts.  
4

5 THE DEFENDANT: Yes, but I hope I have a  
6 better explanation.

7 THE COURT: I will hear everything. I have  
8 an open mind. I want to be sure that you are aware  
9 of the situation. You can be sentenced up to 15  
10 years in jail and fined \$60,000. Do you understand  
11 that?

12 THE DEFENDANT: Yes.

13 THE COURT: Tell me what you did briefly in  
14 connection with these charges in your own words?

15 THE DEFENDANT: In order to get these contracts  
16 I thought that I had to do an adequate job and in  
17 order to get an adequate job I had to pay to get the  
18 information to do the job competently.

19 THE COURT: Did you make the payment?

20 THE DEFENDANT: Yes.

21 THE COURT: You knew it was illegal to make  
22 payments?

23 THE DEFENDANT: I wasn't aware of the law at  
24 the time, no, sir.

25 THE COURT: You have cancelled checks and all  
that in support?



1 MR. DE PETRIS: Yes, we have cancelled checks  
2 and other documentations to support the charges from  
3 each one of the 6 Grumman employees involved.

4 THE COURT: In view of my knowledge of the  
5 general nature of these events, I do not think it is  
6 necessary for me to inquire further, unless counsel  
7 would like me to? Do you want me to ask anything  
8 further?

9 MR. LUBKIN: Not particularly on this point.

10 MR. DE PETRIS: No, your Honor.

11 THE COURT: How do you plead to Count 1?

12 THE DEFENDANT: Guilty.

13 THE COURT: How do you plead to Count 4?

14 THE DEFENDANT: Guilty.

15 THE COURT: How do you plead to Count 10?

16 THE DEFENDANT: Guilty.

17 THE COURT: How do you plead to Count 16?

18 THE DEFENDANT: Guilty.

19 THE COURT: How do you plead to Count 19?

20 THE DEFENDANT: Guilty.

21 THE COURT: How do you plead to Count 36?

22 THE DEFENDANT: Guilty.

23 THE COURT: I accept the plea. The Probation  
24 Report will take about 8 weeks.

25 MR. DE PETRIS: Your Honor, there is only one

1 other matter and that is pursuant to paragraph 4 of  
2 the understanding -- the letter of understanding.  
3 The defendant has reserved the right with respect  
4 to one narrow issue. It is a technical issue with  
5 respect to jurisdiction, whether the prime contract  
6 involved here is negotiated within the meaning of the  
7 statute.

8 THE COURT: I understand.

9 MR. DE PETRIS: We have a meeting down in  
10 Washington on Thursday at which time he is going to  
11 look at some documents. We have already looked at  
12 some documents out of Grumman. It may be that he  
13 will be satisfied. If not, he has reserved the right  
14 to have a hearing and preserve the issue for appeal.

15 THE COURT: Yes.

16 MR. DE PETRIS: Depending on your Honor's  
17 ruling.

18 MR. LUBKIN: Depending on what we find.

19 MR. DE PETRIS: I gave a Second Circuit case  
20 that not only requires the Government's consent, but  
21 the Court's.

22 THE COURT: I would give my consent, but I  
23 believe the cases have been properly decided. I do  
24 not believe the consent of the parties can give  
25 Federal jurisdiction in this instance, where it lacks



11  
1 jurisdiction.

2 MR. LUBKIN: I have only one question:

3 I do not know if this is the proper time, on  
4 the matter of the cooperation of the defendant? Shall  
5 I reserve that to the time of sentencing?

6 THE COURT: I think that would be best.

7 I can take a memorandum from you or hear you  
8 orally.

9 MR. LUBKIN: Thank you.

10 THE COURT: Thank you very much.

11 Bail continued?

12 MR. DE PETRIS: Yes, your Honor.

13 THE COURT: All right.

14 MR. DE PETRIS: If it is necessary for a hearing  
15 to be held, I guess after Thursday we will get in  
16 touch with your chambers and set a date?

17 THE COURT: Thank you very much.

18 MR. LUBKIN: Thank you.

19 Is there a particular date as to sentencing?

20 THE COURT: We will have to set one based on  
21 the report is available. We will be in touch with you.

22 Probation wants to see you.

23 MR. LUBKIN: I see him. Thank you very much,  
24 your Honor. Have a nice day.

25 \* \* \* \* \*

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
UNITED STATES OF AMERICA, :  
-against- :  
JOSEPH RACKER, :  
Defendant. :  
-----X

74-CR-589

United States Courthouse  
Brooklyn, New York

March 12, 1975  
9:30 o'clock a.m.

B e f o r e :

HONORABLE JACK B. WEINSTEIN, U.S.D.J.

HENRI LE GENDRE  
ACTING OFFICIAL COURT REPORTER



1  
2 Appearances:

3  
4 DAVID G. TRAGER, ESQ.,  
5 United States Attorney for the  
6 Eastern District of New York

7  
8 BY: RONALD DE PETRIS, ESQ.,  
9 Assistant United States Attorney

10  
11 MESSRS. LUBKIN, COHEN & STRACHER,  
12 3000 Marcus Avenue  
13 Lake Success, New York 11040  
14 Attorneys for the Defendant

15 BY: ARTHUR LUBKIN, ESQ.,  
16 -and-  
17 HOWARD COHEN, ESQ.,  
18 Of Counsel

19  
20 Also Present:

21  
22 JOHN B. BALL

23  
24 HAROLD HILLER  
25

1 THE CLERK: U.S.A. versus Joseph Racker.

LeG:jm 2 MR. DE PETRIS: I asked for this to be put on  
3 the calendar this morning, it's a hearing scheduled  
4 for Friday that you are probably aware that  
5 Mr. Racker, when he stated whether the records of  
6 prime contracts were negotiated within the meaning  
7 of the contract and in furtherance of the hearing on  
8 Friday, Mr. Thayer issued a number of subpoenas. I  
9 can give you a copy, show you one of them, give you  
10 some idea of the language. The subpoena involving  
11 that same language has been served on the United  
12 States Navy contracting officer at Grumman at  
13 Bethpage.

14 THE COURT: Mark it.

15 THE CLERK: Subpoena marked Government's  
16 Exhibit number 1.

17 MR. DE PETRIS: It has been served on  
18 Admiral -- shall I wait, your Honor -- it has been  
19 served on Mr. Nelson who is general counsel, I  
20 believe, with the United States Navy Department; it  
21 has been served on the Secretary of the United States  
22 Navy, Washington, D.C.; it has been served on the  
23 Secretary of Defense in Washington, D.C.; and it has  
24 been served on Grumman and Mr. Ball representing  
25 Grumman is authorized to make a motion on their behalf.



1 I also understand, although I'm not specifically  
2 aware, that the subpoenas had also been served on  
3 the other companies mentioned in the subpoena.

4 MR. LUBKIN: Yes.

5 MR. DE PETRIS: But none of their attorneys  
6 has been in contact with me so I have no specific  
7 knowledge as to that. So this morning the Government  
8 is moving to quash the subpoenas. I'd be glad to  
9 set forth my grounds. I have not received formal  
10 papers. I understand they haven't been filed as yet  
11 with respect to the hearing at this point, so I think  
12 I have a good idea of what the point is; and it's  
13 conceded, I believe, that the prime contracts  
14 directly related to the sub-contracts -- if your  
15 Honor recalls from the Martin trial, on the face of  
16 the sub-contracts, it lists the prime contracts, the  
17 number. It directly relates to -- it's conceded that  
18 all those prime contracts are negotiated. I have  
19 here with me the face sheet of the contract  
20 indicating it's negotiated and the underlying finding.  
21 You'll probably recall those similar papers. I don't  
22 think there's any question that they were negotiated.  
23 I believe it's defense counsel's position that the  
24 original contracts, design contracts with respect to  
25 the airplanes which are covered by these later

1 production contracts, were not negotiated, and there  
2 are three steps which have to be followed to reach  
3 the position they are seeking to establish, as I see  
4 it; number one, they take the position the  
5 production contracts directly related to these  
6 contracts which are members of the design contracts  
7 which took place back in maybe the 1950s. That's the  
8 first step.

9 Secondly, if it's established it's an  
10 amendment, it would have to be their position it is  
11 solely the pattern of the design contract which  
12 controls the question of jurisdiction, not the  
13 status of the production contract which directly  
14 relates to design contract;

15 And, thirdly, it is their position that the  
16 status of the design contract is that they were  
17 formally advertised and not negotiated.

18 I think that's the three step process that they  
19 have to reach.

20 THE COURT: With respect to the third, what  
21 is the Government's position? Were they negotiated?

22 MR. DE PETRIS: They were negotiated. It's  
23 only that third step where the subpoenas might come  
24 into play. There are the face sheets even as to  
25 design contracts. There are face sheets which



1 Mr. Lubkin saw when he went down to Washington --  
2 indicate on their face that they have been negotiated  
3 and the underlying findings.

4 THE COURT: Is there any objection having  
5 those face sheets marked?

6 MR. DE PETRIS: No; but the position, I  
7 believe, of the defense is even though they were on  
8 their face negotiated, that the differences between  
9 formal advertising and negotiation are so similar  
10 that in effect there is no difference, or something  
11 to that effect; but in any event, that's the third  
12 step and at the third step there might possibly be  
13 some relevance to the subpoenas.

14 THE COURT: Why are you objecting?

15 MR. DE PETRIS: I'm moving to quash on two  
16 grounds; one, the subpoenas are very burdensome, I am  
17 advised, and I have here with me two gentlemen from  
18 the Navy, and I'm advised it would be very burdensome  
19 if they even have these documents which go back to  
20 1950.

21 THE COURT: Is Grumman able to produce the  
22 documents?

23 MR. DE PETRIS: It would be the same status  
24 with them, same difficulty. We have some records of  
25 contracts going back to the original design contract;

1           yes.

2           THE COURT: What is the point of bringing the  
3 Navy in if Grumman has the material?

4           MR. LUBKIN: It was not my intention to try  
5 my entire case today. We have since the inception  
6 here, by co-operation with the Government, attempted  
7 to physically -- the initial contracts that involve  
8 three airplanes in this particular matter, myself,  
9 Mr. Cohen, Mr. DePetris and Mr. Kay were at Grumman  
10 voluntarily and we had a discussion with  
11 Mr. Howard Dunn. At that time we did receive certain  
12 face sheets -- I'm not sure if they are face sheets,  
13 and certain documentation which alluded to  
14 determination of findings, and those documents were  
15 of recent vintage. Namely, I think they ran between  
16 1969 and 1963. At the end of that conference it was  
17 determined by all the parties that were there that  
18 the documents that we really wanted to examine were  
19 not present and to the best of my recollection  
20 Mr. Dunn stated that he didn't have personal  
21 knowledge of them. In fact I have here from Mr. Dunn  
22 as recently as yesterday -- he states he doesn't have  
23 any personal knowledge of those records. We there-  
24 after voluntarily made arrangements to go to  
25 Washington into the offices of NAV and present at that



1 time was again myself, Mr. Cohen, Mr. DePetrus,  
2 Mr. Kay, who is a member of the FBI, and a Mr. Nelson,  
3 who I later learned his name, Erling; and again at  
4 that time even though we were -- I thought was the  
5 main offices of the Navy or NAV, again we did not  
6 receive or see the initial contracts. The only thing  
7 we have that was given to us, aside from certain  
8 regulations, was a photostat, I would call it a  
9 memorandum of testimony by the Secretary of the Navy  
10 before a Congressional committee; and in that  
11 document, which, of course, alludes to our main  
12 contention that the initial contract was by formal  
13 advertisement, even alludes to the first or second  
14 order of the actual airplanes and the Navy calls them  
15 acknowledgment contracts, letter contracts.

16 THE COURT: What exactly do you want that they  
17 aren't giving you?

18 MR. LUBKIN: I want the original advertising,  
19 the invitations to bid; the letters that went out  
20 for the Government showing the specifications of the  
21 airplanes; the best and final offers given by eight  
22 different companies; the process thereafter by the  
23 United States Navy. I have not seen any of these  
24 documentations.

25 THE COURT: That doesn't seem very --

1 MR. DE PETRIS: I'm advised that the material  
2 is set forth --

3 THE COURT: Forget about the subpoena.

4 MR. DE PETRIS: Mr. Lubkin just covered  
5 everything that's in the subpoena.

6 THE COURT: How big is the contract?

7 MR. DE PETRIS: These contracts get very bulky.

8 THE COURT: Is that the material (indicating)?

9 MR. HAROLD HILLER: This is part, there is a  
10 request for a proposal, the proposal itself at the  
11 bottom.

12 THE COURT: Do you have this material for the  
13 contract in question?

14 MR. HILLER: No. That's all maintained in  
15 Washington.

16 THE COURT: Do they have it there?

17 MR. DE PETRIS: They don't know. It would  
18 require going back to directly where the records are  
19 stored.

20 THE COURT: Can't you get it?

21 MR. DE PETRIS: Your Honor, this is the  
22 position. It could be burdensome. It seems to  
23 irrelevant. If I may just explain the Government's  
24 position and cite some case law.

25 THE COURT: I agree it seems tenuous.



1 MR. LUBKIN: We have a hearing scheduled for  
2 Friday. The relevancy should be determined by the  
3 Court, not today. Today is a motion to quash a  
4 subpoena.

5 MR. DE PETRIS: Based on the grounds what the  
6 subpoena calls for is irrelevant.

7 THE COURT: Where are the face sheets to  
8 these contracts, the original contracts?

9 MR. DE PETRIS: If they are available, they  
10 would be in storage in Washington.

11 THE COURT: You have to get those.

12 MR. DE PETRIS: If I may just be heard, your  
13 Honor.

14 THE COURT: Yes.

15 MR. DE PETRIS: Since I don't think there is  
16 any dispute that it would be of some great burden to  
17 get it, although it could be gotten, if we should  
18 first see if they could get through the first two  
19 hurdles before we get to the third problem. We could  
20 produce -- Grumman has the production contracts which  
21 are -- am I correct? The ten production prime  
22 contracts which relate directly, relate to the  
23 sub-contracts.

24 MR. BALL: There are basically two prime  
25 contracts which these airplanes came from but we do

1 not have any of the other material with respect to  
2 solicitation.

3 THE COURT: Doesn't the design contract have  
4 recitations in it?

5 MR. BALL: Yes.

6 THE COURT: Why isn't that enough for you?

7 MR. LUBKIN: Again, your Honor, I don't want  
8 to try the case, but I'll enumerate again. There  
9 will be presented to the Court -- certain steps will  
10 show in effect the initial contract was by formal  
11 advertising and not negotiated, and we need those  
12 memorandums and documents to substantiate our case.  
13 I would like to say further, the burden of proof is  
14 on the People here and I'm trying to prepare my case  
15 and trying to do my job and we have taken it upon  
16 ourselves to attempt to do it by subpoena power.

17 THE COURT: Produce Friday the production  
18 contracts. You have them available, now show them  
19 to counsel and give them to the Government.

20 MR. DE PETRIS: Those have always been  
21 available to defense counsel.

22 THE COURT: The original design contract will  
23 be produced Friday.

24 Do you have any on the original correspondence  
25 with respect to the design contract?



1 MR. BALL: I was looking yesterday. I saw  
2 one solicitation from the Government, obviously our  
3 files would only be duplicate of what the Navy has.  
4 It wouldn't be nearly as complete.

5 THE COURT: Bring in the complete file.

6 Motion to quash the subpoena against the  
7 Government agency is granted with leave to renew  
8 after the Friday hearing.

9 MR. COHEN: Your Honor, in addition, the  
10 Navy department is the one that has the original  
11 invitations that went out to all the people.

12 THE COURT: Grumman should have that in  
13 their file.

14 MR. COHEN: They only have one. We would like  
15 to see what the process was that the Navy used in  
16 establishing its -- obtaining its source.

17 THE COURT: Let's see what Grumman has.  
18 Counsel for defendant has indicated the burden is on  
19 the Government.

20 MR. DE PETRIS: I would like to call to your  
21 Honor's attention legislative history.

22 THE COURT: Brief it for Friday. I don't want  
23 to go into that now; and the subpoena against Grumman  
24 is modified as I've just indicated. You'll bring in  
25 whatever you have.

1 MR. BALL: On the original design contracts.

2 MR. LUBKIN: I have one question, your Honor.  
3 The United States Attorney may be correct and  
4 Mr. Ball may be correct, that the original documents  
5 are probably in Washington; that we have served  
6 subpoenas on agencies and individuals there.

7 THE COURT: I'm quashing them all, just taking  
8 what Grumman has. I'm not going to empty out  
9 Washington's warehouse until I see what Friday's  
10 hearing develops.

11 MR. LUBKIN: Can I have an exception to your  
12 ruling at this point, your Honor?

13 THE COURT: Certainly. If necessary, we'll  
14 grant a continuance, it's not a jury issue. Thank  
15 you, gentlemen.

16 MR. DE PETRIS: It may be hard to brief the  
17 issue until I receive papers from Mr. Lubkin. May I  
18 give your Law Clerk the case?

19 THE COURT: Why don't you look at his brief  
20 and see what you want to do and give him copies of  
21 whatever you are going to give me.

22 Thank you, gentlemen.

23 \* \* \* \* \*



1  
2 UNITED STATES DISTRICT COURT  
3 EASTERN DISTRICT OF NEW YORK  
4 -----x

5 UNITED STATES OF AMERICA, :

74-CR-589

6 -against- :

7 JOSEPH RACKER, :

8 Defendant. :

9 -----s

10  
11 United States Courthouse  
12 Brooklyn, New York  
13 9:30 o'clock A.M.  
14 March 14, 1975

15 B e f o r e :

16 HONORABLE JACK B. WEINSTEIN, U.S.D.J.

17 DEFENDANT'S MOTION ON JURISDICTION, ETC.  
18  
19  
20  
21  
22

23 DANIEL D. SIMON  
24 OFFICIAL COURT REPORTER  
25

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Attorney for McDonnell-Douglas Corporation



1  
2 THE CLERK: U.S.A. v. Joseph Racker.

3 THE COURT Yes, gentlemen.

4 MR. LUBKIN: Good morning, your Honor.

5 MR. DE PETRIS: Good morning.

6 MR. COHEN: Good morning, your Honor.

7 THE COURT: This is a hearing?

8 MR. DE PETRIS: Yes, your Honor, this is a  
9 hearing in which the defendant has reserved the right  
10 to raise the question as to whether the requisite  
11 prime contracts between Grumman Aerospace Corporation  
12 and the Department of the Navy were negotiated within  
13 the meaning of the Title 41 United States Code  
14 Sections 51 and 54.

15 At this time the Government --

16 MR. LUBKIN: Well, before we get into that,  
17 your Honor, I believe Mr. Willson here has an  
18 application.

19 MR. WILLSON: Judge, Mr. Sutter advised this  
20 Court that we would seek on behalf of Mr. Martin,  
21 Mr. Rutkowski, and Theil Technical Services, Inc.  
22 to participate here as amicus in this proceeding.

23 I was informed by Mrs. Wexler the other day  
24 that your Honor would hear this this morning. And  
25 Mr. Sutter, unfortunately, and I believe he spoke

1 to Mrs. Wexler yesterday afternoon, is down on the  
2 fourth floor, I believe before Judge Platt, in the  
3 case of the United States v. Restolli. He anticipates  
4 that it would be very brief and should be up here  
5 shortly.

6 In the meantime, our basis for the application  
7 was the appeal we have pending on the case that was  
8 tried here with respect to Martin and Rutkowski.  
9 This morning, in the mail, because of my illness and  
10 our failure to perfect our appeals, we were on the  
11 brink of dismissal, but I received this morning in  
12 the mail an order from the Court of Appeals extending  
13 our time to file the appendix and brief until  
14 April 2nd. So there is still a viable appeal.

15 Our primary and perhaps sole contention in  
16 that appeal is that the Government failed to meet its  
17 burden of proof regarding the negotiation of the  
18 contracts pursuant to the statute. And I think the  
19 issue here as to whether or not the contracts were  
20 in fact negotiated pursuant to the statute is certainly  
21 an underlying matter in that appeal and would have a  
22 direct bearing on it.

23 THE COURT: You are applying to appear as  
24 amicus?

25 MR. WILLSON: That is correct, Judge.



1 THE COURT: What is the view of counsel for  
2 Mr. Racker?

3 MR. LUBKIN: Your Honor, I will request that  
4 the Court grant that application.

5 And in addition, if the Court does grant the  
6 application, I would request that the hearing  
7 commence when Mr. Sutter comes up from the fourth  
8 to the sixth floor, which should be shortly.

9 THE COURT: Any objection from the Government?

10 MR. DE PETRIS: No, your Honor. I am not  
11 sure what bearing it would have, if any, on the  
12 appeal. But I certainly have no objection to their  
13 appearing as amicus curiae in this proceeding.

14 THE COURT: I do not see how it does have  
15 any bearing on the appeal. The record is fixed;  
16 but since we have distinguished counsel in both  
17 cases, the Court is happy to obtain their judgment  
18 and wisdom.

19 We will take a short recess.

20 MR. DE PETRIS: Your Honor, perhaps we can  
21 start to the extent of marking certain documents?

22 THE COURT: If counsel will do that in my  
23 absence, that will be useful.

24 MR. LUBKIN: I don't know how much time we  
25 have, but I just received a little package

1 (indicating). And I think I should have an oppor-  
2 tunity to see what is inside.

3 MR. MENAKER: Your Honor, I am here from the  
4 Martin Marietta Corporation in response to a subpoena  
5 in this case.

6 THE COURT: You will have to work it out with  
7 counsel and see whether you can get some stipulations  
8 so you can go about your business.

9 THE CLERK: Portions of ten prime contracts  
10 marked as Government's Exhibits 1 through 10  
11 inclusive for identification.

12 Ten Navy determinations and findings marked  
13 as Government's Exhibit 1A through 10A inclusive  
14 for identification.

15 A prime contract marked for identification as  
16 Government's Exhibit 3B for identification.

17 A prime contract marked as Government's  
18 Exhibit 10B for identification.

19 (Documents referred to were thereupon marked  
20 as Government's Exhibits 1 through 10 inclusive for  
21 identification, 1A through 10A inclusive for  
22 determination, 3B for identification and 10B for  
23 identification, respectively.)

24 (Short recess.)

25 (After recess.)



1 THE COURT: I will hear from the Government  
2 first because I believe it has the burden of proof  
3 here.

4 MR. LUBKIN: Your Honor, before the Government  
5 starts I would like to put a motion on the record.

6 At this time I would like to move to have  
7 this hearing before an impanelled jury. And the  
8 reason for my motion, your Honor, is that under the  
9 Constitution, namely, the Sixth Amendment, the  
10 defendant has a right to trial by jury. And the  
11 issue in this particular case stems out of a  
12 criminal prosecution, and what we are hearing today  
13 is an essential element of the indictment to  
14 determine, of course, whether the so-called  
15 "contract" is either negotiated or with formal  
16 advertising. And for those reasons I would request  
17 that a panel of jurors be selected.

18 THE COURT: Didn't he plead guilty in this  
19 case?

20 MR. LUBKIN: That is correct, your Honor.

21 THE COURT: Well, by pleading guilty he  
22 waived his constitutional right to a jury trial.  
23 I believe it was explained to him that he was  
24 entitled to a jury trial and that he waived that  
25 right. Isn't that so?

1  
2 MR. DE PETRIS: That is correct, your Honor,  
3 and the only thing --

4 MR. LUBKIN: May I answer? At the time of  
5 the plea, that is correct, but also at the time of  
6 the plea by agreement with the Government we did  
7 reserve the right to make a determination as to  
8 whether the contract was "negotiated" under Title 41  
9 Section 51 through 54.

10 THE COURT: I understand that reservation.  
11 I do not have the transcript available. But I would  
12 be doubtful if I didn't inform you at the time that  
13 I had substantial doubts about the propriety of what  
14 I understand to be the Second Circuit practice of  
15 in effect permitting appeals after pleas of guilty.  
16 I think that that practice is unwarranted in law.  
17 I will, however, in order to fully protect your  
18 client hear this as in effect a motion to set aside  
19 the judgment of conviction based on newly-discovered  
20 evidence not available to you, because I understand  
21 that you have made substantial efforts, some of  
22 which you claim have been blocked. I believe this  
23 procedural device is a more effective device and is  
24 consonant with the rules of practice and the  
25 jurisdiction of the appellate courts. And that, it



1 seems to me is the way I am going to proceed. However,  
2 I understand your position. I believe you are  
3 correct in making the record. And the motion is  
4 denied.

5 MR. LUBKIN: I have one more application which  
6 at this time, your Honor --

7 MR. DE PETRIS: Excuse me, before that, just  
8 for the record, with respect to the first application  
9 I would just like to point out that the only  
10 reservation made at the time of the plea was with  
11 respect to a hearing before the District Court.  
12 Nothing was reserved with respect to a jury trial.

13 THE COURT: Well, the transcript will show  
14 what happened there. We don't have it before us.

15 Has it been transcribed?

16 MR. DE PETRIS: I am not sure, your Honor.  
17 But I think Court's Exhibit 1, which is what was  
18 marked, is the reservation at the time.

19 THE COURT: I think you will need for purposes  
20 of appeal, should there be an appeal, a transcript of  
21 that discussion.

22 MR. DE PETRIS: Yes, your Honor, I would order  
23 that at this time.

24 The plea was on January 21, 1975 before  
25 Judge Weinstein, Mr. Simon.

1 THE COURT: There may also have been discussion  
2 at the sentence. Have I sentenced him?

3 MR. DE PETRIS: No, the sentence is scheduled  
4 for next Tuesday.  
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1 MR. DE PETRIS: No, the sentence is  
2 scheduled for next Tuesday.

3 MR. LUBKIN: Your Honor, on behalf of the  
4 defendant our office has subpoenaed nine companies  
5 or corporations. In part there are representatives  
6 here from three of the corporations, namely, Textron,  
7 which presently, I believe, owns Bell Aerospace.

8 There is a representative from the Martin  
9 Marietta Company which was formerly called the  
10 Martin Company. And there is a representative from  
11 Fairchild Republic.

12 I believe all three gentlemen, your Honor, are  
13 in the courtroom now and are attorneys with the  
14 respective companies. Their testimony should take  
15 a very, very short time. I think the questioning  
16 will be very brief.

17 I think each of them has a statement that they  
18 want to make for the record.

19 I am just doing it on behalf of them as a  
20 courtesy to counsel so they don't have to sit here  
21 an unlimited amount of time.

22 THE COURT: I think we have to do that.

23 MR. LUBKIN: If we could put them on, and I  
24 won't interfere any more, your Honor, if we can call  
25 them out of turn.

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THE COURT: Do that. Call them out of turn.

2

THE CLERK: Raise your right hand.

2

3

MR. EIKENBERRY: Excuse me, your Honor, I am

4

not technically a witness. I am outside counsel

5

for McDonnell-Douglas Corporation. And I just

6

wanted to report what efforts had been made and what

7

the position would be on the subpoena.

8

THE COURT: All right, sit down.

9

Do you want him sworn?

10

MR. LUBKIN: Yes, I think so.

11

THE COURT: Swear the witness.

12

P E T E R G. E I K E N B E R R Y , called as a witness,

13

having been first duly sworn by the Clerk of the

14

Court, took the witness stand and testified as follows:

15

THE CLERK: State your full name, please.

16

THE WITNESS: Peter G. Eikenberry,

17

E-i-k-e-n-b-e-r-r-y, 67 Wall Street, New York, N.Y.

18

Appearing as counsel for McDonnell-Douglas Corpora-

19

tion.

20

MR. LUBKIN: Your Honor, excuse me, do you

21

want me to stand while I question?

22

THE COURT: No, however you are most

23

comfortable.

24

MR. LUBKIN: Thank you, your Honor.

25

(continued on next page)



Eikenberry

DIRECT EXAMINATION

BY MR. LUBKIN:

Q Mr. Eikenberry, have you had recent discussions with any principals, or officers, or directors, of the McDonnell-Douglas Aircraft Company?

A Yes, I have.

Q And that company has been served with a subpoena duces tecum in this particular matter?

A That is correct.

Q And as a result of the service of that subpoena, have the employees and/or officers of that particular company conducted a search for the records requested therein?

A Yes. I have spoken with Mr. Wynne Morriss, who is Assistant General Counsel and Assistant Secretary of the Douglas Corporation, and who is causing a search to be made.

I have advised Mr. Morriss that the subpoena probably is technically insufficient in that twenty-two dollars was tendered and it was served on a corporate agent.

But we are not at this time putting forward any technical objections. I am just stating that we have been unable to locate any documents called for by the subpoena.

Eikenberry-direct

4                   The McDonnell-Douglas Corporation is a corporation that is comprised of at least two companies, including the Douglas Aircraft Company and the McDonnell Company. They merged in 1967. Because of the chaos that resulted from a combination of records, and because of the loss of a truckload of documents in Los Angeles in 1962, so far they have not been able to find any trace of the documents that have been called for.

                  They are also having some problem because the subpoena, which I do not have a copy of yet, seems to be rather broad on the things called for.

                  We will continue to make a search.

                  I can inform defendant's counsel if we locate anything. And at that time I would advise as to what position we would take as to the subpoena since we have no idea how many documents you are talking about and what form they are in or anything else.

                  MR. LUBKIN: At this time, your Honor, which I should have done before, I have a photostatic copy of the subpoena that was served on the registered agent for McDonnell-Douglas in New York.

                  I show it to Government counsel.

                  THE COURT: Mark it in evidence.

(continued on next page)



Eikenberry-direct

THE CLERK: Defendant's Exhibit A in evidence.

(Document referred to was received and  
marked Defendant's Exhibit A in evidence.)

BY MR. LUBKIN:

Q Mr. Eikenberry, can you identify that as the  
subpoena that was served on McDonnell-Douglas and the items  
contained therein?

A It conforms with the description that I was  
given over the telephone by Mr. Morriss in at least two  
different conversations that I have had with him this week.

Q For the record, would you read the main body  
of the items of the document --

THE COURT: No, don't read it. I will look  
at it.

MR. LUBKIN: I have no further questions.

THE COURT: Thank you.

THE WITNESS: Can I briefly make a resume of  
my two legal positions? I think the subpoena should  
be served on an officer of McDonnell-Douglas. And I  
think that the witnesses from the appropriate place,  
St. Louis or Los Angeles, should be served with the  
subpoena.

But again I would state we are not really  
resisting on those technical grounds.

Eikenberry

THE COURT: Thank you very much.

MR. LUBKIN: Thank you very much,

Mr. Eikenberry.

(Witness excused.)

MR. LUBKIN: Mr. Morris Krug.

MR. KRUK: It is Kruk.

MR. LUBKIN: I am sorry.

M O R R I S   K R U K , called as a witness, having been  
first duly sworn by the Clerk of the Court, took  
the witness stand and testified as follows:

THE CLERK: State your full name, please.

THE WITNESS: Morris Kruk, K-r-u-k, Staff  
Attorney, Fairchild Republic Company.

DIRECT EXAMINATION

BY MR. LUBKIN:

Q        Mr. Kruk, is this a copy of the subpoena that  
was served upon your company? (handing)

A        Yes.

MR. LUBKIN: I would like to show this to  
the Assistant U.S. Attorney and mark the same into  
evidence.

THE COURT: Mark it.

THE CLERK: Defendant's Exhibit B in evidence.

(Document referred to was received and marked  
Defendant's Exhibit B in evidence.)



Kruk-direct

BY MR. LUBKIN:

Q Now, in accordance with the items contained in said subpoena, did the employees or officers of the company conduct a search for the records contained in said subpoena?

A A very exhaustive search. We find no records. I have nobody available who has any knowledge that the Fairchild Republic Company was ever involved in the program--

Q You are referring to the A-6?

A Yes, A-6.

Q And the E-2 program?

A Nothing.

Q No records have been found?

A Not only no records, but we have no knowledge of being involved in the program to bid on this aircraft.

MR. LUBKIN: I have no further questions.

THE COURT: Thank you.

(Witness excused.)

MR. LUBKIN: Mr. Frank H. Menaker, Jr.

(continued on next page)

17  
1 F R A N K H. M E N A K E R , Jr., called as a witness,  
2 having been first duly sworn by the Clerk of the  
3 Court, took the witness stand and testified as  
4 follows:

5 THE CLERK: State your full name.

6 THE WITNESS: My full name is Frank H. Menaker,  
7 Jr., Assistant General Counsel, Martin Marietta  
8 Corporation, 11300 Rockville Pike, Rockville, Maryland.

9 MR. LUBKIN: May I proceed, your Honor?

10 THE COURT: Yes.

11 MR. LUBKIN: Thank you.

12 DIRECT EXAMINATION

13 BY MR. LUBKIN:

14 Q Mr. Menaker, would you look at the copy of the  
15 subpoena duces tucem and advise the Court whether the same  
16 was served on the Martin Marietta Company (handing)?

17 A Yes, sir.

18 MR. LUBKIN: I would like to mark this into  
19 evidence, your Honor, and I will show it to the  
20 Assistant U.S. Attorney.

21 THE CLERK: Defendant's Exhibit C in evidence.

22 (Document referred to was received and marked  
23 Defendant's Exhibit C in evidence.)  
24

25 (continued on next page)



Menaker-direct

BY MR. LUBKIN:

Q Mr. Menaker, did employees and officers and/or directors of the Martin Marietta Corporation conduct a search for the records requested therein?

A The employees did.

Q Can you tell us the results of your search at this time?

A We were unable to find any of the documents which you have subpoenaed, or any knowledge of the existence of these documents, either presently or at the time they may have been created.

Q Let me ask you this, can you tell how wide a search was made in your company? Was there a request made of old-time employees?

A Yes.

Q And officers, et cetera?

A Well, the primary place of business of the Martin Company, which has since become the Martin Marietta Corporation, was Baltimore, Maryland. During the time when I think you are seeking records -- what was the time?

Q The time factor I would place between 1956 and 1958.

A During that time, the primary place of business of the company was in Middle River which is east of

Menaker-direct

Baltimore. And they did produce aircraft at that facility up until 1960. Since 1960 the corporation has not produced a production aircraft of any type for anyone and has gone out of the aircraft business as of 1962 and 1963.

The Middle River facility probably has no more than one thousand employees working there now on several components and things like that. Some of that contract work is in the aerospace industry. But the records that may have existed at the time that you are seeking would have been disposed of many years ago.

We did talk to employees who worked in that facility in aircraft production who are now in other locations and they are not knowledgeable of the existence of the program.

MR. LUBKIN: Thank you. I have no further questions.

THE COURT: Thank you, sir.

THE WITNESS: Are we released from further attendance?

THE COURT: Yes, you are, thank you.

(Witness excused.)

MR. LUBKIN: Your Honor, in connection with the subpoenas that were served on these various companies, there was delivered to my office yesterday



1 two telegrams. One is from Textron, Inc., transferee  
2 of Bell Aerospace Corporation. The second is from  
3 W. A. Sullivan, Associate Counsel, Lockheed Aircraft  
4 Corporation, Burbank, California.

5 At this time, I will show the same to both  
6 Mr. Sutter and Mr. DePetris, give them copies.

7 I would like to submit it into evidence. And  
8 next to the telegram from the Textron company is the  
9 copy of the subpoena that was served upon them.

10 Mr. DePetris, here is a copy of the telegram,  
11 and to Mr. Sutter.

12 MR. SUTTER: Thank you.

13 THE CLERK: Defendant's Exhibit D in evidence.

14 (Document referred to was received and marked  
15 Defendant's Exhibit D in evidence.)

16 MR. LUBKIN: I offer into evidence the  
17 aforesaid telegram to Lockheed together with a copy  
18 of the subpoena that was served.

19 MR. DE PETRIS: I have a copy of that. It was  
20 sent to me.

21 MR. LUBKIN: I will give a copy of it to  
22 Mr. Sutter then.

23 THE CLERK: Defendant's Exhibit E in evidence.

24 (Document referred to was received and marked  
25 Defendant's Exhibit E in evidence.)

1 MR. LUBKIN: I am giving a copy to the  
2 Assistant U.S. Attorney of the Lockheed telegram.

3 Your Honor, just one moment. There were two  
4 other corporations subpoenaed, namely, North American  
5 Rockwell Corporation and Boeing Airplane Company --  
6 if you will bear with me for one moment, your Honor  
7 -- I have an affidavit of service that I want to  
8 indicate -- I have here an affidavit, actually of  
9 admission, from a Frank P. Rogers of 120 Broadway,  
10 designated agent C. T. Corporation System, indicating  
11 as a part therein North American Rockwell and Boeing  
12 Airplane Company.

13 There is also a notation -- and not to mislead  
14 the Court -- with a double asterisk saying, "...that  
15 as far as Boeing is concerned the company name not of  
16 record. The company shown is discontinued from our  
17 records ..."

18 However, your Honor, to the best of my  
19 knowledge -- although I can't speak personally, but I  
20 know from one of my partners who is not here -- that  
21 a representative of Boeing Airplane Company did in  
22 fact call my office and did in fact state that they  
23 received the subpoena. If your Honor wants my  
24 partner whom I referred to, he is engaged in another  
25 matter in Nassau County -- but they did say that they



1 were canvassing the records and they couldn't locate  
2 the same at this time.

3 Our office did not excuse them from any  
4 appearance today, your Honor.

5 Your Honor, as far as the North American  
6 Rockwell Corporation, I do not have any personal  
7 knowledge at this time whether they did in fact  
8 communicate with our office, but they were in fact  
9 served with the subpoena and they are not present  
10 today.

11 Again as part of the defense of this action,  
12 we did subpoena them to have one of their represen-  
13 tatives here.

14 And I would like to offer this into evidence  
15 at this time, a copy of two subpoenas and an affidavit  
16 of service.

17 THE CLERK: Defendant's Exhibit F in evidence.  
18 (Document referred to was received and marked  
19 Defendant's Exhibit F in evidence.)

20 MR. SUTTER: You have both the subpoenas and  
21 the admission?

22 MR. LUBKIN: Yes.

23 THE COURT: Is there any reason why the  
24 Government should not now proceed?

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MR. WILLSON: No, your Honor, except on my last item of North American, Boeing, I don't know what the Court's pleasure would be to get a representative here. They were properly served. As your Honor can see the other companies have sent representatives here on their own or sent a telegram.

One did call the office. And there may be material. I don't know what information they have to add to defendant's case.

THE COURT: All right, the Government will now proceed.

MR. DePETRIS: The Government calls Mr. Baker.

Before swearing in the witness may I identify for the record certain exhibits that have been marked.

Government Exhibits 1 through 10 are the ten production contracts between Grumman and the Navy.

If there had been a trial in this matter there were a number of subcontracts that would have been introduced into evidence. Those subcontracts bearing a number indicating which prime contract they were awarded under.

These are the ten prime contracts under which those subcontracts were ordered.

Now the witness will identify these. But I think it has been agreed that these are the ten prime



1 2 contracts at Grumman under which the subcontracts were  
2 awarded.

3 I also have --

4 MR. LUBKIN: Your Honor, I would like to raise  
5 an objection. I know Mr. DePetrus is not sworn --  
6 as to the identification of these ten contracts as  
7 prime contracts, because I feel that is the basic  
8 of the conflict today.

9 THE COURT: Well, we have a witness. He can  
10 describe them.

11 MR. DePETRIS: Well, without referring to them  
12 as prime contracts, these are the ten contracts --

13 MR. LUBKIN: Production contracts.

14 MR. DePETRIS: Ten production contracts under  
15 which the subcontracts were awarded to you, sir, is  
16 that correct? Is that correct.

17 MR. LUBKIN: Well, we have a witness. But they  
18 are production contracts, yes.

19 MR. DePETRIS: But this witness is not familiar  
20 with the subcontracts that were awarded to you, sir.

21 MR. LUBKIN: Right.

22 MR. DePETRIS: So it is agreed that these are  
23 the ten production contracts under which the sub-  
24 contracts were awarded to you, sir.

25 MR. LUBKIN: One moment.

3

(Examines documents.)

I do not want to hold up the court for the purpose of marking for identification, but I will reserve any possible objections I might have later on, you know, as to admissibility.

But for the purpose of marking them at this time I will just let it go subject to my reservation to raise an objection.

THE COURT: Well, is there a stipulation that these are the contracts under which the subcontracts were let or not?

MR. LUBKIN: I do not think there is any controversy here pertaining to the subcontracts.

THE COURT: Well, then let's have a stipulation that the subcontracts were let under these production contracts without conceding that they are prime contracts or anything else about them, if that's the fact.

MR. LUBKIN: Yes, your Honor, so stipulated.

THE COURT: That's from 1 to 10. Mark them.

THE CLERK: 1 through 10 for identification marked in evidence.

MR. LUBKIN: Your Honor, I object to them being marked in evidence at this time. There has been no foundation layed. These are only the fly sheets.



1           4       These are not the contracts.

2                   THE COURT: All right, is this witness  
3 capable of testifying as to them?

4                   MR. DePETRIS: Yes, the witness will testify.

5                   THE COURT: All right then let's keep them for  
6 identification.

7                   MR. DePETRIS: Your Honor, Government's  
8 Exhibits; 1A to 10A are the corresponding findings  
9 and determinations made by the Navy with respect to  
10 product contracts identified as Exhibit 1 through 10,  
11 1 and 1A corresponding, and 2 and 2A corresponding,  
12 and copies of these have been made available to the  
13 defense sometime ago.

14                   These I can offer into evidence.

15                   MR. LUBKIN: At this time I vehemently object  
16 to those being marked in evidence.

17                   The defendant has a right of cross-examination  
18 here. We have been trying to do this for several  
19 months --

20                   THE COURT: All right, sustained. There is  
21 no foundation.

22                   MR. DePETRIS: All right, your Honor, I am not  
23 sure that Mr. Baker has any knowledge of the Navy  
24 findings.

25                   THE COURT: Well, we will have to proceed at

1           5     the moment. I can't take 1A to 10A, there is no  
2                     foundation obviously.

3                     MR. DePETRIS: Well, there was certain ground  
4                     rules layed with Mr. Lubkin as to how this hearing  
5                     was going to proceed, your Honor. I will have to  
6                     ask for an adjournment in order to bring someone from  
7                     the Navy.

8                     THE COURT: You will get the time you need. If  
9                     a continuance is needed you will have it.

10                    MR. DePETRIS: I will proceed with the witness  
11                    your Honor.

12                    THE COURT: What about those other documents?

13                    MR. DePETRIS: Government's Exhibits 3B and  
14                    10B are the production contracts relating to Governments,  
15                    Exhibits 3 and 10.

16                    Let me just explain, Mr. Lubkin and myself had  
17                    a conference after we were here on Wednesday and it  
18                    agreed that we would bring a certain portion of all  
19                    the documents --- of all the contracts -- production  
20                    contracts. That is what Government's 1 through 10  
21                    are. The face sheet and certain other documents in  
22                    there indicate what the contract dealt with.

23                    It was agreed it would not be necessary to  
24                    bring the entire production contract with respect to  
25                    those ten provided that we brought one of the production



1 6 contracts with respect to a particular aircraft.<sup>28</sup> And  
2 that is what Government's Exhibit 3B is.

3 THE COURT: All right, I take it that if 1 to  
4 10 come in then 3B and 10B come in.

5 MR. LUBKIN: Yes. These are also subject to  
6 witness coming from Grumman and testifying that the  
7 other eight would be similar in nature, of course, or  
8 even duplicates of one contract.

9 MR. DePETRIS: This witness will establish that.

10 MR. LUBKIN: That is why I wanted evidence.

11 MR. DePETRIS: That explains why we have  
12 certain exhibits.

13 THE COURT: Raise your right hand.

14 E L L S W O R T H B A K E R, called as a  
15 witness, having been first duly sworn by the Clerk  
16 of the Court, took the stand and testified as  
17 follows:

18 THE CLERK: State your full name please.

19 THE WITNESS: Ellsworth L. Baker.

20 DIRECT EXAMINATION

21 BY MR. DePETRIS:

22 Q Would you please state your name for the  
23 record?

24 A Ellsworth L. Baker.

25 Q Mr. Baker, by whom are you employed?

1	7	Baker-direct
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29

2 A Grumman Aerospace Corporation.

3 Q And in what capacity are you employed by  
4 Grumman?

5           A           That would be deputy contract -- I am sorry,  
6           but it is a new title -- contract director -- we change  
7           names occasionally.    I am deputy whatever it is responsible  
8           for contracts.    Let me put it that way if I may.

9 Q Will you tell us what your duties consist of?

10                   A           Representing for the company in contract  
11 negotiations and pricing the company's interest in  
12 accepting contracts.

13 Q How long have you had those duties with the  
14 company?

15                   A           Approximately 12 years off and on at various  
16                   stages, not all of them at all times.

17 Q Now, I show you Government's Exhibits 1 through  
18 10 for identification.

19 (Documents handed to the witness.)

20 THE WITNESS: Thank you.

21                   A           And I would ask you to examine those exhibits  
22                   and identify them for the record.

23 Q Without going through each page of each one  
24 of them, I do recognize most of them as obviously Grumman  
25 contracts. Without going through each page I don't know



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2 exactly which model is involved.

3 Q Would you take each one, one by one, Exhibit 1  
4 for identification, and identify it as to the type of document  
5 it is?

6 A I can say it is the fiscal year 1971 production  
7 contract.

8 Q It is a contract between whom, Mr. Baker?

9 A Between the United States Navy as represented  
10 by the Naval Air Systems Command and Grumman Aerospace  
11 Corporation -- I think we were Grumman Aerospace at that  
12 time -- yes; for 11 model E-2C aircraft and associated parts.

13 The basic contract is the aircraft and data  
14 tests.

15 Q Aside from the aircraft itself does the aircraft  
16 call for production of certain support equipment and technical  
17 manual?

18 A It has in it provisions for subsequent  
19 requirements, training and parts, formal schools, ground  
20 support equipment for E-2C aircraft, technical manuals and  
21 other materials of a similar nature ancillary to the basic  
22 production item but necessary to support it.

23 Q That Exhibit contains certain portions of the  
24 contract, is that correct?

25 A Yes, it does.

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2 Q That is not the entire contract?

3 A No, that is correct, it is not.

4 Q Will you turn to Government's Exhibit 2 for  
5 identification and identify that please?

6 A Do you want the contract number or is that  
7 unnecessary?

8 Q Yes, would you identify the contract number?

9 A The first one is N0019-71-C-0450.

10 Q Mr. Baker, I believe that all of these contracts  
11 contain the designation, N00019, is that correct?

12 A That is right. It identifies the procurement  
13 office of the Naval Air Systems Command.

14 Q So in identifying the rest of the documents  
15 you can just identify the numbers are the N00019?

16 A Fine.

17 Q Will you turn to Government's Exhibit 2, please?

18 A Right. It is 70-C-0525.

19 Q What is that document?

20 A That one is for the procurement of 12 model  
21 EA-6B being 12 model EA-6B aircrafts in fiscal year 1970.

22 Q And what type of document is that?

23 A It is a prime contract for the procurement  
24 of 12 aircraft.

25 Q Between whom?



1  
2 A Between the Naval Air Systems Command and --

3 MR. LUBKIN: Your Honor, I must raise objection.  
4 We had certain ground rules but these are not the  
5 contracts before him.

6 These are extracts from some type of, as was  
7 described the other day, voluminous documents. That  
8 is my only objection as to that particular point.

9 THE COURT: Yes. They will be deemed extracts.

10 MR. LUBKIN: I must raise that objection again  
11 as to the use of the word "prime" contract.

12 THE COURT: Well, the man is an expert. I  
13 will take his testimony subject to cross-examination.

14 THE WITNESS: If I misunderstood let me restate

15 --

16 THE COURT: Do not respond to what anybody says  
17 except the person who is questioning you please.

18 Q Mr. Baker, is there something you wish to  
19 state with respect to your prior answer.

20 A Only that this is not the totality of the  
21 contract. It is an extract from what is a prime contract  
22 for 12 model EA-6B aircraft.

23 MR. LUBKIN: Can I have a continuing objection  
24 to the use of the words "prime contracts" your Honor?

25 THE COURT: You may.

1  
2 Q Mr. Baker, who was that contract between?

3 A The Naval Air Systems Command and Grumman  
4 Aerospace Corporation.

5 Q And does the contract also call for the  
6 production of certain support equipment and technical  
7 manuals?

8 A Yes, it does. Would you like me to read that  
9 off or not?

10 MR. DePETRIS: No, the contract will be  
11 offered into evidence. That will be sufficient.

12 Q Now, would you turn to the next exhibit?

13 A Extracts from contract 71C0226. And it is  
14 the fiscal year 1971 production contract for 11 model EA-6B  
15 aircraft.

16 And it has the normal additional or ancillary  
17 items that are subject to being procured after the award of  
18 the initial contracts.

19 Q Does that include support equipment and  
20 technical manuals?

21 A Yes, it does.

22 Q Now, sir, did you state who that contract was  
23 between?

24  
25 (Contd' on next page.)



1  
2 A Between Naval Air Systems Command and Grumman  
3 Aerospace Corporation. At the bottom of the page it is  
4 represented as Naval Air Systems Command and Grumman Aero-  
5 space.

6 Q Would you turn to the next exhibit.

7 A Yes. This one is 67-C-0185. And it is for  
8 63 Model A-6A-- production contract for '63 Model A-6A  
9 for the fiscal year 1967.

10 Q And who was that contract between?

11 A Between the Department of the Navy, Naval  
12 Air Systems Command, and in this case Grumman Aircraft  
13 Engineering Corporation.

14 Q And does that also call for certain support  
15 equipment and publications?

16 A Yes, it does.

17 Q Will you turn to the next exhibit.

18 A This is No. 68-C-0106. It is the fiscal '68  
19 production contract for 78 Model A-6A aircraft.

20 MR. LUBKIN: I didn't hear that.

21 THE WITNESS: It is a fiscal 1968 production  
22 contract for 78 Model A-6A aircraft, support equip-  
23 ment and publications.

24 Q Who was that contract between?

25 A Department of the Navy, Naval Air Systems

2 1 Command, and Grumman Aircraft and Engineering Corporation.

3 Q Would you turn to the next exhibit, please.

4 A 69-C-0075. And it is for the -- production  
5 contract for the fiscal year '69 procurement of 36 Model  
6 A-6A aircraft.

7 Q Does it also call for the production of certain  
8 support equipment and publications?

9 A Yes, sir, it does that.

10 Q Who is that contract between?

11 A Department of the Navy and Grumman Aerospace  
12 Corp. -- Department of the Navy, Naval Air Systems Command,  
13 and Grumman Aerospace Corporation.

14 Q Will you turn to the next exhibit.

15 A 70-C-0558 -- let me double-check that -- I  
16 think that's what it is, yes, it is the fiscal year '70  
17 production contract for 12 Model A-6E aircraft.

18 Q Does that call the production also of certain  
19 support equipment and technical manuals?

20 A It has the option in it to buy the technical  
21 manuals and ground support equipment. And it is between  
22 the Department of the Navy, Naval Air Systems Command and  
23 Grumman Aerospace Corporation.

24 Q Will you turn to the next exhibit, please.

25 A The identification of 71-C-0444 --



1 Q Mr. Baker, by the way, when it has a certain  
2 designation of 71, or 69, or whatever it is, does that term  
3 have any significance?  
4

5 A The is the fiscal year of award, the Govern-  
6 ment's fiscal year of award for the contract, 71, 69 or 68,  
7 that I have been reading off.

8 Q Will you identify that exhibit.

9 A This is the production -- fiscal year '71  
10 production contract for 12 Model A-6E aircraft.

11 Q Does it also call for the production of certain  
12 support equipment and technical manuals?

13 A Yes, it does.

14 Q Who was that contract between?

15 A Between the Department of the Navy, Naval  
16 Air Systems Command, and Grumman Aerospace Corporation.

17 Q Will you identify the next exhibit, please.

18 A 70-C-0458. And it is the fiscal year 1970  
19 procurement -- I am sorry -- this is not procurement per se --  
20 this is the fiscal year 1970, procurement of a modification  
21 of four airplanes delivered by the Government to us to modify  
22 into a different configuration from A-6A into A-6E.

23 Q Does it also call for the production of certain  
24 support equipment and technical manuals?

25 A Yes, it does.

1 Q Who is that contract between?

2 A Department of the Navy, Naval Air Systems  
3 Command and the Grumman Aerospace Corporation.  
4

5 Q Will you identify the last exhibit.

6 A Yes. It is designated as 72-A-007. And this  
7 is a fiscal year 1972 basic ordering agreement against which  
8 the Government, the local representative of the Government,  
9 may order goods and services to modify products that we have  
10 previously delivered to the Government.

11 Q Does it cover a variety of aircraft?

12 A Yes, it does. It covers all the airplanes in  
13 production as well as airplanes we no longer produce.

14 Q Does it also cover support equipment and  
15 technical manuals?

16 A Let me double-check that. It certainly should.

17 Yes, it does.

18 Q Now, I notice some of the exhibits refer to  
19 Grumman Aerospace Corporation and some refer to Grumman  
20 Aircraft Engineering Corporation.

21 Will you explain exactly what those two companies are.

22 A Yes. The Grumman Aircraft Engineering Corpora-  
23 tion has been in existence -- had been in existence for some  
24 roughly 30 years. And in 1969, if I am not mistaken, the  
25 selection was made by the corporation to create a Grumman



corporation -- from the Grumman Aerospace Corp. to the Grumman Engineering Corporation, to wit, the basic Grumman Engineering Corporation becoming a wholly-owned subsidiary of the Grumman Aerospace Corporation.

Q And what did the Grumman Aircraft Engineering Corporation become?

A The Grumman Corporation.

Q And Grumman Aerospace is a subsidiary of the Grumman Corporation?

A A major subsidiary of the Grumman Corporation, right.

Q Did that take over the contracts which Grumman Aircraft Engineering Corporation had?

A Yes, they were referred to Grumman Aerospace Corporation --

Q Now, are you familiar with the term prime contract?

A Yes.

Q And can you tell us whether or not Exhibits 1 through 10 are prime contracts?

MR. LUBKIN: I object, your Honor.

THE COURT: Overruled.

MR. LUBKIN: No foundation laid.

THE COURT: How long have you been in the

business?

THE WITNESS: I am sorry. I have been there since 1955.

THE COURT: Did you deal with the Government?

THE WITNESS: No, I am with the company.

THE COURT: Did you deal with the Government?

THE WITNESS: Yes, I did.

THE COURT: What is your educational background?

THE WITNESS: Bachelor of Arts from Brown University.

THE COURT: All right, see if you can establish some of his background for the record.

BY MR. De PETRIS:

Q Mr. Baker, you had joined Grumman during what year?

A 1955.

Q Have you been with Grumman ever since then?

A Yes, sir.

Q And have any of your duties included any dealings with the Government?

A Yes, sir.

Q Any dealings with the United States Navy?

A Yes.

Q Of the Department of Defense?



1  
2 A Yes.

3 Q Just briefly describe your duties with respect  
4 to the United States Government Department of Defense and  
5 the United States Navy during the years 1955 to date.

6 A Determining and establishing contract -- scopes  
7 of work and contract requirements, and terms and conditions  
8 of contracts that were mutually agreed -- mutually agreed to  
9 be signed with each other. Essentially, in a nutshell --  
10 it is not very elaborate -- but that is what it is.

11 Q In the course of your duties have you had  
12 occasion to have negotiations and discussions with the  
13 representatives of the Government?

14 A Yes.

15 Q During the course of your duties has it become  
16 necessary for you to become familiar with the procurement  
17 statutes, regulations and directives by the Government?

18 A Yes.

19 Q I believe you stated before that you are  
20 familiar with the term prime contract.

21 A Yes.

22 Q Can you tell us whether or not --

23 MR. LUBKIN: I object, your Honor. I think I  
24 would like a voir dire based on that.

25 THE COURT: Yes.

MR. LUBKIN: Thank you.

## VOIR DIRE EXAMINATION

BY MR. LUBKIN:

Q Mr. Baker, are you an attorney-at-law?

A No, I am not.

Q Have you ever attended any law school?

A No. I had a course in college, one summer of it, of business law.

Q Now, getting back to your duties with the Government, you are what would be considered a technical man for Grumman, is that right?

A I presume that would be correct, yes.

Q And the nature of your duties is -- technically it had to do with the airplanes and its components and parts, et cetera?

A Yes. But might I modify my previous answer --

Q No. I would like you to answer the question.

THE COURT: Well, I will allow him to modify his answer.

MR. LUBKIN: All right.

THE WITNESS: I would like to say, yes, in part it is technical, but it is also more business oriented than it is purely technically oriented. Technically oriented we think of as engineering, design engineering,



1 and so forth. That is not the orientation specifically  
2 that I have.

3 Q Now, when you say business oriented, are you  
4 referring to the financial aspects of any given negotiations  
5 of Grumman with the Government?  
6

7 A Yes, in part, definitely.

8 Q That is your main function?

9 A In part, yes, sir.

10 MR. LUBKIN: I renew my objection, your Honor.

11 THE COURT: Overruled. He is an expert in  
12 negotiations with the Government on contracts.

13 What do you make a year?

14 THE WITNESS: Excuse me?

15 THE COURT: What is your salary?

16 THE WITNESS: It would be better than \$30,000.

17 THE COURT: Is that pretty well up in Grumman?

18 THE WITNESS: I would say that it is, yes.

19 THE COURT: All right, he is a high executive  
20 in Grumman. You may inquire.

21 DIRECT EXAMINATION

22 BY MR. De PETRIS: (Continued)

23 Q Mr. Baker, as a result of your duties and your  
24 familiarity with procedures with respect to negotiation and  
25 contracts, are you familiar with the term prime contract?

1  
2 A Yes.

3 Q Can you tell us whether or not Government's  
4 Exhibits 1 through 10, whether or not they are prime  
5 contracts?

6 MR. LUBKIN: Your Honor, I must object at this  
7 time. We had a ground rule here where one of the  
8 major portions of a particular contract would be --  
9 that the witness would testify to -- would merely have,  
10 as the witness said, certain abstracts from a contract,  
11 and I raise my objection on that point.

12 THE COURT: He is identifying them as abstracts  
13 from prime contracts. You may continue.

14 Q Mr. Baker, can you tell us whether or not  
15 Government's Exhibits 1 through 10, the contracts which they  
16 represent portions of, whether or not they are prime con-  
17 tracts?

18 A Yes, they are.

19 MR. LUBKIN: I renew my objection, your Honor.

20 THE COURT: Overruled.

21 Q And, Mr. Baker --

22 THE COURT: The court of course will not be  
23 bound by this witness' characterization. The Court  
24 will make its own determination based upon the records  
25 and other evidence before it. But the way that the



parties deal with these matters is obviously of some significance in determining what the intention of the Navy and the United States was.

Q Mr. Baker, I show you Government's Exhibit 3-B and 10-B and ask you if you can identify those exhibits.

A Government's Exhibit 3-B, 71-C-0226 --

MR. LUBKIN: Would you repeat that? I am sorry.

THE WITNESS: 71-C-0226.

A (Continuing) This is a copy of the production contract -- well, it is one that is in this group -- it is for the 11 model EA-6B aircraft, production of the EA-6B aircraft for the fiscal year '71.

MR. SUTTER: Your Honor, may I assist the witness with something?

THE COURT: What is that?

MR. SUTTER: May I assist the witness with respect to something?

THE COURT: Yes.

(Thereupon, ensued a discussion between Mr. Sutter and the witness out of the hearing of the reporter.)

Q I am sorry. I am not sure whether you have identified what Government's Exhibit 3-B is.

A It is the copy of the full contract that was

1  
2 apparently Exhibit 3, the extract which was Exhibit 3, in  
3 the first material that you asked me to identify. And it is  
4 a production contract for 11 Model EA-6B aircraft, the fiscal  
5 year 1971.

6 Q Is that the entire production contract?

7 A This is the entire production contract as  
8 originally awarded, that is correct.

9 Q Can you tell us whether or not, putting aside  
10 the basic ordering agreement which is Government's Exhibit  
11 10 and 10-B, can you tell us whether or not the terms and  
12 provisions of Government's Exhibit 3-B, the complete contract,  
13 is substantially the same as the provisions of the complete  
14 contracts of Government's Exhibits 1 through 9, other than  
15 for the fact that it covers different aircraft, et cetera?

16 A Yes, sir, they are certainly basically similar.  
17 As statutes change, and as regulations change, and as the  
18 years change they get updated. They are different in certain  
19 aspects and are different products in certain respects, and  
20 occasionally a slightly different variety of services may  
21 be added. Other than that they are similar and essentially  
22 parallel.

23 Q And would you identify Government's Exhibit 10-B.

24 (Continued on next page.)  
25



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Q And can you identify Government's Exhibit 10B?

A This is a basic ordering agreement No. 72A-0007, which is the same as the extract was in Exhibit 10.

Q And is that the complete original?

A This is the complete original contract, correct, right.

MR. DE PETRIS: Your Honor, I would offer into evidence Government's Exhibits 1 through 10, 3B and 10B.

THE COURT: Any objection?

MR. LUBKIN: Your Honor, I would like the opportunity to examine very briefly the last two, that is 3B and 10B. The others, your Honor, I believe I have seen before.

THE COURT: While you are examining them the Clerk will mark 1 to 10 in evidence.

THE CLERK: Government's Exhibits 1 to 10 marked in evidence.

(Documents referred to having been previously marked Government's Exhibits 1 to 10 for identification were now received and marked Government's Exhibits 1 to 10 respectively in evidence.)

THE COURT: Can you pick up easily from those sheets the amounts involved in dollars?

2 1  
2 THE WITNESS: It is entirely possible from some  
3 of them, yes, from the papers that are there, yes, I  
4 can, definitely.

5 MR. DE PETRIS: Your Honor, the dollar value for  
6 each one is on the, I think, third page. I can show  
7 your Honor where it is or if you would like to have the  
8 witness identify it he can. I was going to go into the  
9 price provisions very briefly after they were put into  
10 evidence.

11 THE COURT: All right, good.

12 Do you want some time? Do you want a recess?

13 MR. LUBKIN: Yes.

14 THE COURT: We will take five minutes.

15 (Short recess.)

16 (After recess.)

17 THE COURT: Yes, gentlemen.

18 MR. DE PETRIS: I think the last thing your  
19 Honor was I had offered 1 through 10 and 3B and 10B.

20 THE COURT: 1 and 10 are in evidence.

21 Any objection to 3B and 10B?

22 MR. LUBKIN: No, your Honor.

23 THE COURT: Mark them in evidence.

24 THE CLERK: 3B and 10B in evidence.

25 (Documents referred to having previously been



Baker-direct

marked Government's Exhibits 3B and 10B for identification were now received and marked Government's Exhibits 3B and 10B in evidence.)

MR. DE PETRIS: Judge, I have just a few more questions.

ELLSWORTH BAKER, called as a witness, having been previously duly sworn, resumed the stand and testified further as follows:

DIRECT EXAMINATION

BY MR. DE PETRIS (Cont.):

Q Would you examine Government's Exhibits 1 through 10? First, can you tell us from examining 1 through 10 what the price provisions were with respect to those contracts?

A I believe so, yes. I think in every case -- by price provisions do you mean whether it is a firm price-fixed contract or a cost-plus contract?

Q Yes.

A I think in every case it would be evident by the indication that is there.

Q Can you do that as to each one?

A Exhibit 1 -- do you want the contract number or just Exhibit 1?

Q Exhibit 1 is sufficient.

A Exhibit 1 is a fixed price incentive contract.

1 Do you want the value?

2  
3 MR. LUBKIN: Excuse me. Can you speak just a  
4 little slower, please?

5 A (Continuing) It is a fixed-price incentive contract  
6 with a target price of \$156,800,000.

7 Q You have used certain terms there, Mr. Baker,  
8 and I would ask you please to define the terms to the Court.  
9 First, what is a fixed price incentive price provision?

10 A May I define first a fixed price contract?  
11 It may make it more easy to understand.

12 Q Yes.

13 A A fixed price contract is one that we enter  
14 into, and say for a specified number of dollars we will do  
15 a specified job to a schedule.

16 A fixed price incentive contract says that  
17 those dollars are only target dollars. And you don't have  
18 to do it for exactly those dollars.

19 We will share up and down. If you do it for  
20 less the Government will have more money back. If we do  
21 it for more, up to a certain ceiling, we will be paid  
22 additional money --

23 Q Government's Exhibit 1 was a fixed price  
24 incentive contract?

25 A Yes, that is correct.



Baker-direct

Q You identified the target price there. In other words, the final price for that particular contract can vary up or down from that target price?

A Yes, it can. And if the right clause is here I can tell you what that would be, if it is of interest.

THE COURT: No.

Q And will you examine Government's Exhibit 2 through 10 and tell us whether or not they were also fixed price incentive contracts? You might identify the target price of each.

A And Exhibit 2 is a fixed price with the target price of \$136,530,000.

Exhibit 3 is a fixed-price incentive with a target price of \$95,503,496.

Exhibit 4 is a firm fixed price contract for a fixed price of \$134,699,985.

Q What do you mean by that term?

A A fixed price is the amount of money that will be received for doing that job and not subject to the adjustment on a fixed price incentive up or down depending upon how you perform.

Q In other words, there was a footnote to that fixed price; is that correct?

A Yes, but that is for changes under the changes

clause that they might make to the airplane -- as opposed to  
incentive provisions.

Q Well, would you explain what you mean by that?

A Certainly. All Government contracts have a  
clause that will permit the Government to unilaterally direct  
changes in the specifications, method of delivery and method  
of packing --

MR. LUBKIN: Your Honor, I object to the  
wording "all government contracts" -- referring to  
these particular contracts, yes. The Government lets  
out millions and millions of contracts a year from  
different agencies.

THE WITNESS: I believe it is found in the  
statute, but I am not sure, so you are probably  
correct.

These contracts have a provision where they can  
do that. And the note down at the bottom:

"...the above price is subject to adjustment  
for changes as specified in Section C thereof...."  
I believe dealt only with that.

And if Section C is here I can ascertain that  
for you.

I do not think we do have Section C. It only  
goes through Section B. There could also be other



provisions but not relating to the total number. But there could be other special provisions in the contract which say that some portion could be subject to some kind of adjustment. Not having Section C here I can't state whether that is correct or incorrect.

Q Would you turn to the next exhibit?

A Certainly. Exhibit 5 is a firm fixed price contract for \$178,249,968.

Q And will you turn to the next exhibit?

A Exhibit 6 is a fixed price incentive contract with a target price of \$89,250,012.

And Exhibit 7 is a firm fixed price contract for \$47,743,996.

Exhibit 8 is a firm fixed price contract for \$45,762,000.

Exhibit 9 is a firm fixed price contract for \$3,950,000.

In Exhibit 10 is a basic ordering agreement which has no dollars at all in the basic contract.

Q And how under the basic ordering agreement -- how are the prices determined from materials or supplies that are ordered pursuant to that contract?

A Would you say that again, please? How are the -- well, the basic ordering agreement makes provision for

1  
2 the -- it states that the contractor will if the Government  
3 makes a demand produce goods and services that are generally  
4 described in the contract and when the Government makes a  
5 demand. It is essentially an option. And the Government  
6 from time to time will make its option for the goods and  
7 services. When the option is made this is the vehicle against  
8 which they are made initially.

9 Q And once the demand is made and certain  
10 materials and supplies were called for, are the prices  
11 separately negotiated or are there provisions in this  
12 contract which set forth the manner in which the prices are  
13 to be set?

14 A There are provisions in here as to how we quote  
15 and how quickly we quote, and how soon we negotiate, and  
16 establish prices and provisions for utilizing the proper forms  
17 and the proper substantiation information and so forth, are in  
18 this contract as they are predecessors against these for the  
19 option items.

20 Q Now, Mr. Baker, as a result of your knowledge  
21 in the field and your dealings with the Government and the  
22 Navy, etc., over the years in which you were with Grumman, are  
23 you familiar with the terms "negotiated" and "formal advertising

24 A Yes.

25 MR. LUBKIN: I object, your Honor. There is no  
foundation laid.



THE COURT: He is laying it now, overruled.

Q And during the course of your dealing with Grumman and United States government had you had occasion to participate or be involved in any contracts which were negotiated?

A Yes, I have.

Q And have you also been involved in any contracts which were formally advertised?

MR. LUBKIN: Your Honor, I must raise objection again. Your Honor has received two different briefs where there was great controversy as to what is the legal meaning of "advertised" and "negotiated". I do not feel that this witness is qualified to tell the court what it is.

He is not an attorney your Honor.

MR. DePETRIS: Your Honor, I am not asking him

THE COURT: Based on Rule 702, and the general practice of Federal court, I rule that this witness is an expert because he has specialized knowledge which will assist the trier to understand the evidence and to determine the fact in issue.

Based on Rule 704 I rule that his testimony on the ultimate issue is admissible.

I rule, however, that his opinions will not in anyway be binding on the court. The Court will make the decision.

Your objection is overruled.

Q Mr. Baker, in the course of your --

MR. DePETRIS: I am sorry. Can we have the last question read back?

(Record read.)

THE WITNESS: Might I digress?

Q If it will help you answer the question.

A I hope that it will.

We worked with the regulation, and within that regulation there is a definition of the two types of contracts we are discussing.

Grumman very seldom with respect to that regulation enters into the type that is called "formal advertise" in that regulation. And as a consequence there is no one at Grumman, including myself, that has much if any experience with what we consider formal advertising.

Q You refer to certain regulations. Is that the Armed Services regulation --

A Yes, Department of Defense, yes.

Q And are you familiar with the procedures for



negotiation and formal advertising as set forth in the regulations?

A Certainly in general I am.

Q And are those the regulations which you follow in the course of your dealing with the government and the Navy?

A Yes, it is. It is in large part the regulation regarding formal advertisements, as the term is used there, that we do not respond to formally advertised contracts.

Q Now, would you examine Government's Exhibit 1 through 10 and tell us whether or not those particular contracts were procured through the procedures of negotiations or by formal advertising as you understand the term?

MR. LUBKIN: Objection your Honor.

THE COURT: Overruled.

A In the terms of the regulations that we follow these are all negotiated contracts.

MR. LUBKIN: Your Honor, I must object. The answer wasn't really responsive to the question.

THE COURT: You may inquire on cross-examination if you wish.

Overruled.

Q And is that so indicated anywhere on the exhibits?

1  
2 A Yes, it is usually indicated on the face page.  
3 And I think in all of these it is.

4 Q Would you examine item 13 of the face sheet of  
5 all those exhibits?

6 A Yes. Do you want me to --

7 Q Will you take each one and tell us what section  
8 it is negotiated pursuant to?

9 A Exhibit 1 is negotiated pursuant to 10 USC2304  
10 (A) --

11 THE COURT: If he is just going to read those  
12 I do not want that.

13 MR. DePETRIS: I was just going to say the  
14 exhibits are in evidence so I do not see any need to  
15 go through that.

16 THE WITNESS: Do you wish me to continue or not?

17 MR. DePETRIS: No, it won't be necessary.

18 Your Honor, at this time I would ask the Court  
19 to take judicial notice of the Armed Services  
20 regulations and the Federal Procurement regulation  
21 set forth in the code of Federal Regulations as cited  
22 in the Government's brief.

23 THE COURT: Any objection?

24 MR. LUBKIN: The only objection I have is that  
25 I don't know which one Mr. DePetrinis is referring to,



5

your Honor.

THE COURT: Well, they are all in the brief.

MR. LUBKIN: If they are in the brief, and I have been served with a copy of the brief and the original is with the Court --

THE COURT: No objection having been noted the Court will take judicial notice.

MR. DePETRIS: May I just have a moment your Honor?

I believe I am through.

THE COURT: Take your time.

MR. DePETRIS: I have no further questions.

THE COURT: Any cross examination?

MR. LUBKIN: There is cross examination, your Honor. I see the time is 12:32. I would request at this time if we can have a lunch recess and can come back for the same.

THE COURT: Certainly. At 1:30 please be back in your place.

MR. LUBKIN: I will be here.

THE COURT: All right, we will take a recess.

THE WITNESS: Excuse me, sir?

THE COURT: Be back at 1:30.

THE WITNESS: Yes.

(Recess taken at 12:33 p.m.)

shb

## AFTERNOON SESSION

(1:45 p.m.)

ELLSWORTH L. BAKER, resumed and testified further as follows:

THE COURT: All right. Continue, please.

MR. LUBKIN: It is my cross-examination, your Honor.

## CROSS-EXAMINATION

BY MR. LUBKIN:

Q You testified previously that the exhibit marked 1 through 10 -- and I have now particular reference to Subdivision 4. Mr. Baker -- you testified that was a fixed price contract, is that correct?

A Yes.

MR. LUBKIN: Correction, your Honor, I'm sorry, it's marked Government Exhibit No. 4.

Q You answered that, Mr. Baker?

A Yes.

Q When you say a fixed price, does that mean that a number of airplanes were ordered under that contract?

A That's correct.

Q Can you tell us how many, sir?

A 63.

Q Is there a fixed price for each of the aircraft, specified price?



1 A Essentially, yes.

2 Q Not to confuse you, Mr. Baker, you can charac-  
3 terize it as a unit price for each particular aircraft and  
4 multiply it by 63; would that be accurate?  
5

6 A There is a unit price for each airplane, and  
7 for convenience we divide the total number of airplanes into  
8 the total price negotiated, and it comes out, but the total  
9 price is the price, yes.

10 Q Can you tell us in that particular contract  
11 what the unit or price for each individual airplane was?

12 A \$2,138,095.

13 Q And essentially, you would times that by 63  
14 and come out with a hundred and 34 million plus?

15 A Correct.

16 Q On that particular contract, what is the date  
17 of the agreement that you have there?

18 A April 5, '69, effective date.

19 Q Prior to that date did you personally have  
20 conversations and/or negotiations with representatives of  
21 the United States Navy or other governmental agency?

22 A Either myself personally or people working for  
23 me, at least currently working for me did.

24 Q The question is you, sir.

25 A Did I personally?

1  
2 Q Yes.

3 A I'm sorry, I can't recall whether I have  
4 personally on this one or not. I cannot recall.

5 Q Exhibit No. 5, Government Exhibit No. 5. You  
6 testified that that was a fixed price contract, is that  
7 correct?

8 A Yes.

9 Q Would it fair to say that -- withdrawn.  
10 In that particular contract the total was \$178 million  
11 plus?

12 A Yes.

13 Q Is that right?

14 A Yes.

15 Q And how many airplanes were ordered under that  
16 contract?

17 A 78 airplanes.

18 Q Is there a fixed unit price for each particular  
19 airplane?

20 A Fixed billing price for each airplane, right.  
21 \$2,285,256.

22 Q You are going too fast for me.

23 A \$2,285,256 each.

24 Q And in the same fashion, if you took the unit  
25 price and you multiplied it by the number of airplanes, and



1 then you come out to the total price on the contract?

2 A Right.

3 Q Now, in that particular contract, that is  
4 dated when, sir?

5 A December 15, 1967. That is the effective  
6 date.

7 Q Did you personally, on that date or before  
8 that date, of course, have any conversations or negotiations  
9 with representatives of the United States Navy, NAVAIR or  
10 other governmental agency?

11 A I cannot recall whether I specifically have  
12 on this particular contract or not. I did on most at that  
13 time. Whether specifically with respect to any particular  
14 one, I'm sorry, I can't recall.

15 Q Now, Exhibit 7, Government Exhibit 7 -- you  
16 testified that that also is a fixed cost contract?

17 A Fixed price, yes.

18 Q Fixed price contract?

19 A Right.

20 Q And did that also mean that there was a specific  
21 unit billing for each airplane in that contract?

22 A Correct.

23 Q And how many airplanes were ordered under that  
24 contract?

1

2

A 12.

3

Q And the unit price of each airplane?

4

A \$3,979,083.

5

Q What is the date of that contract, Mr. Baker?

6

A January 27, 1971.

7

Q Now, as pertains to that particular contract,

8

did you personally have any conversations or negotiations

9

with United States Navy, NAVAIR or other governmental officials

10

pertaining to that particular contract?

11

A Again, I can't specifically say that I have

12

with respect to this one.

13

Q Government Exhibit 8. Can you tell us if that

14

was a fixed price contract?

15

A Yes, it is.

16

Q And again, Mr. Baker, what is the total amount

17

of that particular contract?

18

A \$45,762,000.

19

Q Was there a certain number of airplanes ordered

20

under that contract?

21

A Yes, 12.

22

Q In that contract what airplane was ordered?

23

A Model A6-E.

24

Q When you say Model A6-E, would that be similar

25

to an A6 airplane?



Baker-cross

A It's one of the -- it is the fifth modification -- the fourth modification of that series. A6-A was the first airplane and there were various modifications getting down to the E, which we have in this particular contract.

Q How many airplanes were ordered under that contract?

A 12.

Q The fixed unit billing price for each airplane?

A \$3,813,500 each.

Q What was the date of that contract?

A The 5th of November, 1971.

Q Getting back to the A6, you were saying it goes A, B, C, D, E; is that correct, Mr. Baker?

A Usually speaking, it does. And in the case of this particular model it did.

Q Is that done on an annual basis?

A No. It's done when the specifications and the role of the airplane have changed enough to give it a new model designation.

Q Now, Government Exhibit 9, is that a fixed price contract?

A Yes, it is.

Q Going back to No. 8, Mr. Baker, what is the date of that contract?

1 A 5 November 1971.

2 Q Did you personally have conversations and  
3 negotiations with representatives of the Navy, NAVAIR and/or  
4 any other governmental agency with reference to that particular  
5 exhibit, No. 8?

6 A On this one I'm sure I did not because I was  
7 off for about 11 months working elsewhere under Grumman for  
8 the Government and I wasn't there at this time so I could not  
9 have had on this one.

10 Q What period of time were you away from Grumman?

11 A Approximately February through November of  
12 '71.

13 Q Now we come to No. 9. That is a fixed cost  
14 contract?

15 A Yes, it is.

16 Q And what is the total cost of that contract?

17 A \$1,950,000.

18 Q Was that for the order of airplanes?

19 A This is for the modification of four airplanes.

20 Q Which airplanes are those?

21 A The A6-A to the -- sorry, a new designation,  
22 KA6-D, and this is a tanker version of the Model A6-A airplane.

23 This is a modification for attack aircraft into  
24 tanker aircraft.  
25



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Q At a fixed price?

A At a fixed price, right.

Q For that particular airplane?

A Right.

Q On No. 9, what was the date of that contract,  
Mr. Baker?

A April 22, 1970.

Q Again, did you personally have conferences or  
negotiations with NAVAIR, the Navy or any other governmental  
agency pertaining to that particular contract, No. 9?

A I could only say undoubtedly I have in some  
aspects of it, if not others, but again I can't recall  
specifically whether it is to this contract.

Q Now we come back to Government Exhibit 1.

On direct examination you labeled that contract as a  
fixed price incentive contract, is that right?

A That is correct.

Q That is correct?

A That's right.

Q What is the date of that contract?

A September 30, 1971.

Q And did you personally have conversations and  
negotiations with the Navy, NAVAIR or any other governmental  
agency pertaining to that contract?

1  
2 A At various times in its prior history, yes, I  
3 am sure that I have in this one. This is our first resump-  
4 tion contract on this Model series after a four or five-  
5 year hiatus, and I am sure that I was in this one back in  
6 1970.

7 Q How many airplanes were ordered under that  
8 contract?

9 A Eleven.

10 Q What type of airplane?

11 A Model E2-C. That is AEW -- early warning air-  
12 craft as opposed to the other model we were speaking of.

13 Q Was there a price in the contract -- unit price  
14 in the contract for each of the 11 aircraft?

15 A Yes, except this one has the unit price of the  
16 first one at a higher amount than the unit price of the  
17 remaining 10, because it was a start-up contract and we had  
18 more costs.

19 Q Break it down.

20 A The first airplane was \$28,391,760.

21 Q 23 million --

22 A 28 million. Do you want the rest of the figures?

23 Q Yes.

24 A \$391,760.

25 Q That is for one airplane?



1  
2           A       For one airplane, yes. That is a billing price  
3 for one airplane.

4           Q       Was there a fixed price for the remaining 10  
5 airplanes?

6           A       All right. There are billing prices for the  
7 10 and the whole thing is a target price not a fixed price,  
8 but the other 10 were at a unit billing price of \$12,840,824  
9 each.

10          Q       The total of the contract was \$156 and change?

11          A       Yes.

12          Q       If you took the unit price fixed for the 10  
13 airplanes and added the price of the first airplane you would  
14 come to the contract price, is that right?

15          A       That is correct. You should, unless we have  
16 made an error, which I doubt.

17          Q       Actually, that is a fixed price contract?

18          A       No. The entire contract is a fixed price  
19 incentive contract, this one.

20          Q       Talking about Exhibit No. 1?

21          A       One.

22          Q       Is that right?

23          A       Yes, right. No, this is a fixed price incentive  
24 contract as opposed to a fixed price. Should I briefly --

25          Q       I will ask the questions.

1  
2 But again, if I took the multiplication it would add  
3 up to \$156 million?

4 A Yes. Which is the target price and the billing  
5 price. And the unit billing prices will add up to the target  
6 price.

7 Q When you say incentive, you mean incentive  
8 as to the delivery dates, is that right?

9 A No, as to cost, not as to delivery. The incen-  
10 tive is on cost.

11 Q Is there an incentive there to the Government?

12 A Yes, there is.

13 Q What is the incentive to the Government?

14 A It is some percentage of any gain or loss to  
15 share, and I don't have the incentive price revision area  
16 so I can't tell you what the percentage is without that.

17 This extract does not have that. My guess is it was  
18 probably a 15-85 share or possibly a 20-80 share.

19 (Continued on next page.)  
20  
21  
22  
23  
24  
25



Baker-cross

BY MR. LUBKIN:

Q I may be confused, I don't know if the Court is, but what do you mean when you say 15-80 and 20 something?

A If we mutually agree that the most likely cost to do something is a dollar, but the Government says it could go as high as a dollar and a quarter and we recognize it might go as low as seventy-five cents, but the most logical cost is a dollar, we agree up to the ceiling of a dollar and a quarter to share, and anything below the dollar we also agree to share -- usually on the same ratio. So if it costs ninety cents and there is ten cents to share and the Government gets eight and a half cents of that back and we keep a penny and a half of it plus the profit, that is in the cost area, the cost shared in fixed price incentive.

Conversely, if it is over by ten cents, then the Government in this case pays another eight and a half cents. So it is a dollar eight and a half in that case plus a loss in profit which is added on to it, and it comes up to somewhere to a dollar seventeen instead of a dollar -- if it was ten per cent profit instead of a dollar ten for the whole item.

If the contract costs zero, the Government would get back eighty-five per cent of the total value of the contract, just to illustrate it at one total end.

Baker-cross

Q Exhibit number 2, is that a fixed cost contract?

A It is a fixed price incentive contract.

Q What was the date of that contract?

A November 5, 1970.

Q Did you personally conduct any conferences or negotiations with the Navy or NAVAIR or any other regulatory agency of the Government pertaining to that contract?

A In terms of saying categorically that I did specifically on this one, I'm sorry, I just can't.

Q What is the total cost of that contract?

A 136,550, I believe. Let me double-check. 136,530, and -- a hundred and thirty-six million, five hundred and thirty thousand dollars.

Q Again, was there a number of airplanes ordered under that contract?

A Yes, twelve.

Q Twelve?

A Yes.

Q And is there a unit price for each of those twelve airplanes?

A Unit billing price, eleven million, three hundred seventy-seven thousand five hundred dollars.

Q And that is equal, unlike the first one where



Baker-cross

1  
2 the first one would cost twenty-eight million, here each  
3 plane costs the same?

4 A That's right. This is a unit price, that is  
5 correct.

6 Q What airplane was that?

7 A Model EA6B.

8 Q By the way, the EA6B is a modification of the  
9 A-6; isn't that right?

10 A That is correct, electronic countermeasures  
11 version of the tanker airplane.

12 Q Again, when you say that it is an incentive  
13 contract, fixed price incentive contract -- is it?

14 A Yes, it is.

15 Q Getting back to the price we just determined --  
16 getting back to the incentive, would that be the same as  
17 you explained for the first exhibit?

18 A Conceptually identical. Different dollars,  
19 different amount, different share ratios, but conceptually  
20 operates the same way.

21 Q Exhibit number 3, sir.

22 A Yes?

23 Q What was the date of that contract?

24 A 26 August, 1971.

25 Q And that was for the order of a specific

Baker-cross

number of airplanes?

A I'm sure it was. Yes, it was.

Q How many airplanes and what kind?

A A total of eleven airplanes, one group of eight which I think are the ones with certain pods on it and three to a slightly different one.

Q What is a pod, sir?

A I'm not sure I'm correct in saying it. A pod is like a drop tank on an airplane, except this is a pod with a 20KBA generator in front of it that powers the electronics in the pod through antennas that go out either -- it propagates signals that jam radars and things of that nature.

There are various pod configurations that we sell with these airplanes. I thought that was the difference here. I am not sure I am correct.

Q What type of aircraft?

A Model EA6B. Eleven airplanes. Did I say twelve? Eleven.

Q And is there a price for each airplane fixed?

A Yes, there is.

Q What is that?

A Eight million, six hundred eighty-two thousand one hundred and thirty-six dollars.



1  
2 Q And that would total your ninety-five million,  
3 five hundred and three thousand, four hundred ninety-six  
4 dollars for the contract?

5 A Correct.

6 Q Wouldn't you say that would be a pretty  
7 specific price, Mr. Baker?

8 A Which?

9 Q Ninety-five million, five hundred three  
10 thousand, four hundred ninety-six dollars?

11 A Yes, that is correct. It would be a very  
12 specific price, but it is labeled -- not labeled, it is a  
13 target price instead of a fixed price, and it is subject to  
14 this adjustment on the fixed price incentive basis.

15 Q What was the date of the contract, sir, on  
16 Exhibit number 3?

17 A 26 August, 1971.

18 Q And --

19 A 1970 -- no, '71. This is somewhat blurred and  
20 I am not reading it correctly. But it is 1971.

21 Q Were you personally involved with any  
22 conferences, negotiations with the Navy, NAVAIR, or other  
23 Governmental agency pertaining to that contract?

24 A Again, this is one very likely I was not  
25 because as I said, I was in Washington for three, four, five

6 1 months before the award of this contract. 7

2 During that period I certainly was not.

3 Q Government Exhibit number 6. Is that a fixed  
4 cost contract, Mr. Baker?

5 A No. It is a fixed price incentive.

6 Q And what is the date of that contract?

7 A 19 December, 1969.

8 Q Did you personally participate in any  
9 negotiations or conferences with the Navy on that contract?

10 A I would rather let my other answer stand. I  
11 can't specifically recall, but in general I dealt with most.

12 Q And were there a number of airplanes ordered  
13 under that contract?

14 A Yes. Thirty-six.

15 Q And was there a unit price for thirty-six  
16 airplanes?

17 A Yes.

18 Q How much was that?

19 A Two million, four hundred seventy-nine  
20 thousand, one hundred and sixty-seven dollars.

21 Q What type of airplane is that?

22 A A6A.

23 Q Again, if I multiplied the number of airplanes  
24 by the price you just testified to, I would come to the  
25



Baker-cross

total contract price, is that correct?

A Right.

Q And again, when you say incentive, are you still referring to the previous testimony of the participation with the Government?

A That's correct.

Q You testified that you have been employed with Grumman since 1955?

A That's correct.

Q That means you have been employed there for twenty years?

A Yes.

Q And in your employment at Grumman, have you ever participated in a contract which was labeled in any way formal advertising?

A I have participated, I can certainly recall, in one -- whether it was an abortive attempt or whether we actually did it I don't recall, but in determining whether we would -- I don't recall whether we did bit it or not, but I was -- to that extent I was involved with one contract of an advertised nature for the regulation, as I recall it, and I can't recall the outcome of that at all. It was some years ago.

Q When was it?

Baker-cross

1 A It's a guess. '68, '69.

2 Q Did Grumman receive the award?

3 A No, I'm sure we did not. I know we did not  
4 receive the award. I don't recall that we bid.

5 Q Which Grumman corporation was involved, is  
6 that Grumman Aircraft --

7 A If it was prior to '69, it would have to be  
8 Grumman Aircraft Engineering Corporation.

9 Q And did Grumman receive a solicitation from  
10 the Government on that?

11 A I'm sure we did. The solicitations on  
12 advertised are general solicitations and --

13 Q On that particular contract, did they receive  
14 it, to your knowledge?

15 A If you mean was one mailed to us, to our  
16 attention, I am not sure, or whether we got it from Commerce  
17 Daily or not -- I just can't answer that.

18 Q What do you mean by Commerce Daily, Mr. Baker?

19 A What do I mean by that -- what I mean is that  
20 is a service of the U.S. Government where they resume  
21 contracts to be advertised and sometimes negotiated contracts  
22 to be awarded so that the general community of the United  
23 States may become familiar with them and solicit further  
24 information if they need it so that they can give a bid  
25



Baker-cross

1  
2 response to the solicitation, to a specific solicitation.

3 Q Would you say that would be a newspaper of a  
4 certain kind that would be delivered to the general public?

5 A Yes, essentially, or to the business world in  
6 general, and certainly available to the general public,  
7 very definitely.

8  
9  
10 (continued on next page)  
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EK:tr  
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1

Baker-cross/Lubkin

78

2 BY MR. LUBKIN:

3 Q You say that would be a newspaper of a certain  
4 kind?

5 A Essentially.

6 Q And the general public can subscribe to this  
7 newspaper, to your knowledge?

8 A I am sorry, I am sure there is a subscription  
9 but --

10 Q Raise your voice.

11 A This is the Commercial Business Daily, whether  
12 it is the only way that it is distributed, I am not sure.

13 Q Getting back to this contract, do you have  
14 knowledge if Grumman received notification through the  
15 Commercial Business Daily?

16 A I don't know, I don't know how that particular  
17 one was received.

18 Q Did Grumman receive a solicitation to bid?

19 A On this particular one?

20 Q Yes.

21 A Advertising, you are speaking of?

22 Q That is right.

23 A Again my recollection or my guess has to be  
24 no.

25 You mean by a solicitation, "Will you please



1 2 bid on this item?" to Grumman?

3 Q Yes.

4 A My response to that is that I doubt that we  
5 did.

6 Q If you didn't receive a solicitation, naturally  
7 you did not participate in anyway pertaining to that  
8 particular contract; is that right?

9 A No, there are times when the public offer is  
10 such that it is a self-contained item against which you can  
11 bid and you can elect to bid or not to bid, it is open to  
12 bid.

13 Q When you say "self contained", would it have  
14 all of the specifications?

15 A In some cases there would have to be additional  
16 information, it could be a brand name product.

17 Q In this particular case were there specifi-  
18 cations sufficient for you to make a determination?

19 A I am sorry, I don't totally understand your  
20 question.

21 If we did bid it we certainly requested  
22 adequate specifications, and I don't recall whether we did  
23 that one or not, I don't know.

24 Q That is my question, sir, did you bid that  
25 particular contract?

1                   A        I don't know whether we bid that one, I know  
2  
3 we did bid another one and we lost that.

4                   Q        By formal advertising?

5                   A        By formal advertising, that is correct?

6                   Q        When was that?

7                   A        I would have to guess, that was somewhere in  
8 the '71-72 time frame.

9                   Q        And would that again start with the Commercial  
10 Business Daily?

11                  A        It certainly could have, whether it did or not  
12 I can't answer. That is one of the means by which you can  
13 be aware.

14                  Q        Did you receive a specific solicitation to bid  
15 on that one?

16                  A        My guess would be that on that one we probably  
17 would have to.

18                  Q        Do you know if you did, to your knowledge?

19                  A        No, I don't know to my own knowledge, my  
20 surmise is that we did.

21                  Q        Can I see that?

22                            What is that, 3-B?

23                  A        3-B, yes.

24                  Q        Now, Exhibit 3-B, which one of the ten does  
25 that correspond to?



1  
2 A I guess it is three --

3 MR. DePETRIS: Exhibit 3.

4 A 73C0226 -- I am sorry, 71C0226.

5 Q You said that was a fixed price incentive  
6 contract; is that correct?

7 A Yes, I did.

8 Q And was an order for 11 airplanes, right?

9 A Yes.

10 Q And within Exhibit 3-B, the schedule marked  
11 small f, it says:

12 "The contract target price and ceiling amount  
13 do not include the equitable adjustments for the  
14 below listed changes which are included in the  
15 detailed specifications."

16 I will show this to you so you can see it.

17 A Yes.

18 Q That is a part of that contract; isn't that  
19 correct, Mr. Baker?

20 A Yes.

21 MR. DePETRIS: What page was that?

22 THE WITNESS: 5-2.

23 MR. LUBKIN: I am sorry, Mr. DePetrus.

24 MR. DePETRIS: 5- --

25 MR. LUBKIN: 2.

THE WITNESS: 2.

MR. DePETRIS: That is in the contract, too,  
then.

THE WITNESS: Yes, it is, right.

BY MR. LUBKIN:

Q And below there is a contract item number,  
ACCB, number description; is that correct?

A That's right, right, that is correct.  
I am looking at it here (indicating), these  
are the same.

Q And then there are three items listed beneath  
it; correct?

A Are you speaking up here now (indicating)?

Q Here, 1, 2, 3.

A That is correct.

Q Do any of these three items involve any  
differentiation in moneys as far as the contract is concerned?

A Yes, the contractor's price with the airplane  
described in the specifications, the specifications over  
here indicate subject to the proviso that this area of the  
specification (indicating) is not included in that price  
and will be adjusted later. (Indicating).

Q Right, I see.

And is there any specific price designated for



1  
2 the three items?

3 A At the time of this contract?

4 Q In the contract, sure.

5 A No, there is not, to my knowledge there is not.

6 MR. LUBKIN: For the record, let me read off  
7 this:

8 One item is contract item 1-ACCB number 711-33,  
9 description, Aimes Reporting System, Inc.

10 If this is done in the contract, is there a  
11 specific price for the Aimes Reporting System to be  
12 paid by the Navy to Grumman?

13 A I am sorry, what is that, what is the specific  
14 price, did you say?

15 Q If Grumman performs an Aimes Reporting System --

16 A Yes, which we are obligated to do, right.

17 Q You are obligated to do that?

18 A Obligated to put that in.

19 Q Is that price of the Aimes included?

20 A No, it is not, the price is adjusted according  
21 to the provisos that are set forth down below.

22 Q All right.

23 Down below says in G:

24 "The contract target price and ceiling amount  
25 do not include the equitable adjustments for the

below listed changes which are included in the detailed specifications."

Now, there is listed 1, 2, 3 -- four items, is that correct?

A Yes.

Q Those four items, do they correspond to any of the items in small f?

A I think three of them are the same.

Q Three of them are the same, okay.

And those three items have a specific dollar limitation; is that right?

A Yes, except that the dollar limitation is subject to adjustment, if it isn't the right dollar limitation, which seems rather impossible, but it is the way it is.

Q Well, not to belabor the point, and I am reading from contract item 1, which corresponds to contract item number 1 above, and it has the number, \$21,200?

A That is correct.

Q And you are saying that is not the price?

A The proviso regarding that is on the top of the next page.

If you would like me to, I will read it to you.

Q No, I can read it.

The proviso means that if the contractor is



not happy with the limitation, he can again give written notice to the Government and advise them?

A Essentially you are correct, yes, sir.

(Cont'd on next page.)

1  
2 Q Now, that holds true for the other three items  
3 on that particular page?

4 A That is correct.

5 Q There again there is a specific dollar amount  
6 given?

7 A Yes, a specific dollar amount, the Government is  
8 obligated for these changes.

9 Q We have the whole contract here.

10 A They are not part of the price, they are yet  
11 subject to pricing within this caveats.

12 MR. DePETRIS: May I inquire as to the relevancy  
13 of this area of inquiry?

14 THE COURT: Well, I find it hard to understand  
15 the relevancy, but I will permit counsel to go on for  
16 some little while. Since it is a criminal case I am  
17 giving him the broadest possible scope for examination.

18 MR. DePETRIS: I wasn't objecting, your Honor.  
19 I was just inquiring as to the relevance.

20 A It states -- I am sorry, I am not locate the  
21 appropriate sheet, it is here but I am not able to locate it.

22 The appropriation sheet is here but I am not  
23 able to locate it.

24 I can't find it easily, if you want me to  
25 continue looking --



It had been attached to one of these pieces (indicating).

Q All right, go ahead.

A There is an appropriation data sheet, and what it will have is one item and it will have the numbers that you referred to and the amounts, and you show that over in a different column here (indicating).

Q Well, you are showing me an appropriation data sheet?

A Correct.

Q Control number 0010-70 and for contract 70C0558, right, Grumman Aerospace, and on this particular sheet again with the numbers we have amount in the last column, and would you read that, please?

A Certainly.

Q Just the amount in the last column.

A Item one has the entry twice, it is entered twice, it has two amounts, the first amount is \$1,488,000 the second amount is \$46,260,996.

If you want the table, I will be glad to give it to you.

Q Right.

A \$47,748,996.

Q That is a specific amount; is that correct?

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A That amount?

Q That is the amount that Grumman performed on that contract, that the Navy would pay them, the United States Government.

A In this case, on this contract, it is the amount that is either the target or the fixed price.

I don't know which contract this is of the contracts, it doesn't have any of the other things down such as that other contract that we were discussing.

Q You read from what Exhibit?

A 7.

Q That is a fixed price contract, you testified?

MR. SUTTER: That is right.

A Yes, it is.

Q I see.

MR. LUBKIN: I have no further questions at this time.

THE COURT: Any redirect?

MR. DePETRIS: Just one or two questions, your Honor.

MR. SUTTER: Excuse me, Mr. DePetrus.

Would your Honor extend me the right to inquire?

THE COURT: What?



1  
2 MR. SUTTER: Would your Honor extend me the  
3 right to inquire?

4 THE COURT: No.

5 MR. SUTTER: Thank you, sir.

6 REDIRECT EXAMINATION

7 BY MR. DePETRIS:

8 Q Now, Mr. Baker, during the course of the  
9 years that you were with Grumman Aerospace --

10 THE COURT: You may, however, inquire to other  
11 counsel, but I do not want this client's affected in  
12 anyway by information which may be elicited from you,  
13 so you are free to suggest, as I have noticed you have  
14 had questions to him.

15 MR. SUTTER: Would your Honor grant us a 5-  
16 minute recess so I may confer with Mr. Lubkin?

17 THE COURT: Certainly.

18 MR. SUTTER: Thank you, sir.

19 THE COURT: We will take a 5-minute recess.

20 MR. SUTTER: Thank you.

21 (A 5-minute recess was taken.)

22 THE COURT: Do you want to continue your cross-  
23 examination?

24 MR. LUBKIN: Your Honor, may I, please?

25 THE COURT: You may.

MR. LUBKIN: It will be very short.

## CROSS-EXAMINATION

BY MR. LUBKIN(cont'd):

Q Mr. Baker, on Exhibits numbered 1, 2, 3 and 6, you testified that they were fixed cost contracts?

A Fixed price incentive contracts.

MR. DePETRIS: Which were those exhibits?

MR. LUBKIN: 1, 2, 3 and 6.

MR. DePETRIS: Right.

A Unless I look at them I can't ascertain them from memory.

Exhibit 2 is an FPI.

Exhibit 3 is.

This one is also, Exhibit 1.

And what was the other one? There is one other?

MR. SUTTER: 6.

A Yes.

Q Now, on Exhibit 1, did the Grumman Corporation on the incentive return any moneys to the United States Government, the Navy or Navair?

A I guess I can't answer your question totally, I will try to answer around it, if I may.

I don't think that this contract has been incentively reprise in the terms that it is set up to be done



1  
2 because this is the first production contract of this model  
3 E2C, and it has yet to have that action occurred to it, and  
4 yet the incentive repricing, well, we haven't billed it, we  
5 might have an underrun, that also may have occurred.

6 Q Even as we are talking at this time the only  
7 number in the contract is the \$156,000,000 some odd?

8 A No, the contract has been expanded to have  
9 many things beyond that amount at this point in time. Again  
10 most all of those things are subject to the same incentive  
11 price revision.

12 This as yet is not a total contract, it has not  
13 yet been completed and all if the costs put together haven't  
14 been negotiated with an agreeable price and put into the  
15 formula for the price redetermination.

16 Q On Exhibit 2, have any moneys been returned to  
17 the Navy or NAVAIR under that contract?

18 A Under the contract, under the contract, I know  
19 specifically that on the one aspect, which is not the  
20 incentive price revision aspect, the incentive price revision  
21 clause, that there is a proviso which says, "You won't get  
22 too much money if you are going to make the target. We  
23 don't want you to collect all the money that you would  
24 otherwise," and that proviso has come into operation and  
25 under that clause we have returned or have not billed the

1 whole price that we could have billed.

2 Again it hasn't been incentively repriced,  
3 the full incentive repricing has not occurred.

4 Now, Exhibit 3.

5 A Yes.

6 Q has the United States Navy or the NAVAIR  
7 received any moneys from Grumman?

8 A I can't say --

9 Q Under the incentive provision.

10 A Not to the full percent of it all, there has  
11 not been this incentive repriced thing, they haven't been  
12 added up, they are still in the performance area and until  
13 they are ended, then they are put together in accordance with  
14 the incentive reprising area, but that has not occurred yet.

15 Q And Exhibit number 6, do you have that in  
16 front of you, Mr. Baker, has the United States Navy or the  
17 NAVAIR received any moneys under the incentive provision?

18 A No, on this one we are overrunning and we are  
19 owed money and they have not yet been paid.

20 Q What do you mean by "overrun"?

21 A We have a target cost of \$80,000,000 we have  
22 spent \$80,800,000 and for instance --

23 Q Wasn't that contract \$89,000,000?

24 A The target price is 89 million, the target  
25



1  
2 cost, which the incentive ride on, is \$80,000,000, and we  
3 have spent more than the 80 million in the performance of  
4 this contract.

5 I think there is a million dollar share band  
6 in this contract and we are well into the cost of that  
7 million dollars and we have not been paid that amount through  
8 the share because it has not been redetermined at this time,  
9 so in this case we don't owe the money, the Government owes  
10 us or will when these adjustments have taken place.

11 Q That is under the incentive clauses?

12 A That is correct.

13 Q And you are going to bill the Government more  
14 than \$89 million?

15 A We are going to put our proposal in for a  
16 final pricing of the contract and we are going to negotiate  
17 the cost and determine the cost of the contract with all  
18 the amendments put together and it will be determined then.

19 In this case it was us, we will get so much  
20 more money, and then we will have an additional modification  
21 for this contract which will convert it into a fixed price  
22 contract.

23 Q That leaves possibly my last question:

24 On the 1, 2, 3 or 6, when you do this final  
25 processing or billing, it becomes at that point a fixed

1  
2 cost contract?

3           A       WE finally negotiate something, another  
4 modification against the contract, it might be 100,000,  
5 300,000, it depends upon how much the others have been  
6 before that, and that converts it and that contract is no  
7 longer a target price contract, it has now been redetermined  
8 as a fixed price and this is it, and then we bill against  
9 that final price.

10           MR. LUBKIN: Thank you very much, your Honor.

11  
12 (Cont'd on next page.)  
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1  
2 Q Mr. Baker, during the course of the years that  
3 you have been at Grumman, since 1955, has the Grumman  
4 Corporation, whether it be the predecessor or Grumman Aero-  
5 space, has it had production contracts of aircraft which  
6 were procured by formal advertising?

7 A No, no, it has not entered into a formal adver-  
8 tising, is that what you asked?

9 Q Has Grumman ever entered into a contract with  
10 the Government for the production of aircraft, which contract  
11 was procured by formal advertising rather than negotiations?

12 A No, it has not.

13 Q Now, directing your attention specifically to  
14 the ten production contracts, Exhibits 1 through 10, to your  
15 knowledge when those contracts were being negotiated was there  
16 any competition or was it done solely with Grumman Aerospace  
17 Corporation or its predecessor.

18 A All of these contracts were done with Grumman,  
19 these particular ones that we are speaking of, 1 through 10,  
20 correct.

21 MR. De PETRIS: I have no further questions,  
22 your Honor.

23 THE COURT: Thank you very much, sir.

24 Next witness.

25 (The witness was excused.)

2 1 MR. De PETRIS: Your Honor, the only other  
2 matter the Government has in its case is Government's  
3 Exhibits 1-A through 10-A.

4 I must apologize to the Court, it was my under-  
5 standing that there was no dispute as to the authenticity  
6 of these documents, so therefore I do not have a  
7 witness from the Navy here.

8 MR. LUBKIN: I will correct that, I think it  
9 was more my misunderstanding.

10 THE COURT: Is there any question about authen-  
11 ticity?

12 MR. LUBKIN: Yes, your Honor --

13 MR. De PETRIS: Your Honor.

14 MR. LUBKIN: Continue, Mr. De Petris.

15 MR. De PETRIS: Apparently, your Honor, I was  
16 under a misunderstanding or Mr. Lubkin was under one,  
17 apparently there is a dispute about authenticity.

18 THE COURT: What is the dispute as to authen-  
19 ticity, are these not documents from the business  
20 records of the Navy?

21 MR. LUBKIN: That is my point.

22 I spoke to Mr. De Petris before and I told him,  
23 and it may have been my misunderstanding, your Honor,  
24 and at which point Mr. De Petris said he would request,  
25 subject to your Honor's approval, of course, a continuance



1 in order to bring down the proper Naval personnel who  
2 can testify as to this, namely a Mr. Earling Nelson.

3 THE COURT: What is this dispute, are these in  
4 fact Naval documents from the official files of the  
5 Government?

6 MR. LUBKIN: To my knowledge I don't know that,  
7 your Honor, I honestly don't know that.

8 THE COURT: Didn't you examine the documents  
9 when you were in Washington?

10 MR. De PETRIS: These were examined at a  
11 conference out at Grumman.

12 MR. LUBKIN: The answer is no, your Honor.

13 THE COURT: Who from Grumman can testify as to  
14 these?

15 MR. De PETRIS: Nobody can, your Honor.

16 What happened with those is that the Navy has  
17 an office out at Grumman, a Naval contracting office  
18 there, and they telexed -- I don't know if I am using  
19 the proper word, there is a machine where they telex  
20 those documents down to Grumman, and we had them  
21 available at that conference and they were shown to  
22 Mr. Lubkin at that time. It was my understanding  
23 there was no dispute as to authenticity and therefore  
24 I didn't bring a witness today.

25 THE COURT: Why do we need these documents,

4 1 anyway?

2 MR. De PETRIS: Actually I suppose at this point,  
3 at this stage of the record, we don't at this stage.  
4 The evidence is clear they were negotiated, so,  
5 actually, your Honor, I can rest and produce this on  
6 rebuttal if anything happens with the defense case.

7 THE COURT: The Government rests.

8 Do you have any evidence?

9 MR. LUBKIN: Yes, your Honor.

10 I want to make an application, again, your  
11 Honor, pertaining to the subpoenas that were previously  
12 done, and I reiterate it is most important to the  
13 defense here to have a representative of the Navy that  
14 can be in open court examined and cross-examined as  
15 to the determination and findings made, when they  
16 were made, how they were made.

17 THE COURT: Where is your subpoena power? You  
18 have power to subpoena witnesses.

19 MR. LUBKIN: It was quashed, your Honor.

20 THE COURT: I quashed as to documents, I didn't  
21 quash as to personnel.

22 MR. LUBKIN: I don't have the personnel here,  
23 your Honor.

24 THE COURT: Well, why not?

25 We set the hearing for today.



1 I don't know why this has to drag on.

2 MR. LUBKIN: My office did in fact subpoena --

3 THE COURT: Documents.

4 MR. LUBKIN: And people.

5 MR. De PETRIS: Mr. Baker has brought those  
6 documents today, they are here for him, Mr. Lubkin.

7 THE COURT: What document do you have?

8 MR. LUBKIN: Your Honor, we did subpoena a  
9 Mr. Earling Nelson --

10 THE COURT: Who is he?

11 MR. LUBKIN: He is counsel for the Navy.

12 THE COURT: If you need him, we will bring him  
13 in, but you know the Government really has a lot of  
14 other things to do.

15 If it can be stipulated, I would prefer to do  
16 that.

17 When can this man be here?

18 MR. De PETRIS: Next week, your Honor.

19 THE COURT: Yes.

20 MR. De PETRIS: If it is relevant, he could be  
21 here, but I would like an offer of proof as to the  
22 relevance before we go through --

23 THE COURT: I think it would be useful.

24 MR. De PETRIS: (Continuing) -- through the  
25 necessity of bringing him up here.

6 1 I think from the defendant's brief it becomes  
2 obvious that they are attacking these production con-  
3 tracts, they are questioning whether these negotiated  
4 contracts are design contracts or production contracts.

5 MR. LUBKIN: May I say this, your Honor, on  
6 January 23rd --

7 THE COURT: Will you kindly come back, Mr. Baker.

8 MR. LUBKIN: Your Honor, on January 23rd in  
9 Washington, D.C., there was a conference held and  
10 present at that conference were myself, my partner,  
11 Mr. Cohen, Mr. De Petris, Mr. De Petris' assistant,  
12 Mr. Jeffrey Kaye, Special Agent of the FBI and a  
13 Mr. Earling Nelson whom I believe is counsel to NAVAIR  
14 which has jurisdiction over naval procurement of this  
15 type of airplane.

16 This conference was quite lengthy and I don't  
17 want to sit here and testify, your Honor, but there  
18 were numerous items that came out of that conference,  
19 numerous discussions, and I believe they are very  
20 relevant to the defense of this action and I did  
21 subpoena the man.

22 THE COURT: You did subpoena him?

23 MR. LUBKIN: We did.

24 THE COURT: I do not remember quashing any  
25 subpoena against Nelson as an individual subpoena.



7 1 MR. De PETRIS: There were a number of subpoenas,  
2 there were individual duces tecum subpoenas --

3 THE COURT: Not against Nelson.

4 MR. LUBKIN: He was served personally.

5 THE COURT: The only summonses I had before me  
6 were summonses to produce papers. I wasn't going to  
7 have them bring in truckloads of documents.

8 You have produced the documents that the defen-  
9 dant has requested, sir?

10 MR. BAKER: I can say that these are all the  
11 documents the defendant requested, these are all the  
12 documents we have at Grumman as to design contracts.

13 THE COURT: Mark them.

14 Is there any secret materials?

15 MR. BAKER: No, they have all been down-graded  
16 as of yesterday.

17 These are technical and I prefer not to lose  
18 them because there are disclosures.

19 THE COURT: I will give it to counsel but I  
20 don't want it to get out of your hands.

21 MR. LUBKIN: You have my word.

22 THE COURT: Have you been in the Armed Forces?

23 MR. LUBKIN: Yes, sir, I have been in the United  
24 States Army.

25 THE COURT: All right.

1 Don't let this stuff, I don't know what it is,  
2 don't let it get out of your hands.

3 MR. LUBKIN: I have had crypto clearance, your  
4 Honor.

5 THE COURT: Your client I know has handled this  
6 stuff so he practically knows about it by heart.

7 Now, this fellow Nelson, can he get here?

8 MR. De PETRIS: I could call him, I'm sure he  
9 can be up here next week if it is relevant, but --

10 THE COURT: All right, arrange it.

11 Now let's get to the point. I must say I  
12 haven't read the brief but I don't think that there  
13 is any necessity from the defendant's point that we  
14 go back to design contracts.

15 Have you had any experience with design contracts?

16 MR. BAKER: With respect to these specific ones  
17 or design contracts generally?

18 THE COURT: Generally.

19 MR. BAKER: Yes, I have.

20 THE COURT: What about the specific ones.

21 MR. BAKER: These specific ones, I was at the  
22 company at the time but I was not involved specifically  
23 in a contractual capacity, I have been subsequently.

24 (Continued on next page.)  
25



1 THE COURT: What design contract is that for,  
2 a prototype?

3 THE WITNESS: Well, a prototype is one where  
4 the general industry is solicited to get the best  
5 design and then it is awarded to the one that has  
6 the best design or the proto-best design and then  
7 there is usually a sole source procurement later on.

8 THE COURT: Is there ever a case where the  
9 person who did the design contract didn't get the  
10 production contract?

11 MR. BAKER: In major systems, no, no.

12 THE COURT: Is the design contract obtained  
13 by negotiation or by advertised bid?

14 MR. BAKER: By negotiations, and as defined in  
15 the Arms Service Procurement regulations, as we would  
16 follow it.

17 THE COURT: What is the relationship in cost  
18 now, for example -- well, these contracts relate to  
19 what plane?

20 THE WITNESS: This particular one here, they  
21 relate to production contracts, production follow-on  
22 contracts for model A6A --

23 THE COURT: Let us call it the A6.

24 THE WITNESS: The A6 family and the E2 family  
25 and the basic agreement covers both of them.

2 1 THE COURT: I take it you have got what, a  
2 billion dollars worth of work there?

3 THE WITNESS: In these particular groups of  
4 contracts it is probably a billion five or a billion  
5 six, if you include the totality of the design contracts  
6 as they finally emerge.

7 THE COURT: What is the ratio of design to  
8 production costs, roughly what, a hundred million as  
9 against a billion?

10 THE WITNESS: It depends upon how long the  
11 service stays in production, if the service stays in  
12 production a long time the ratio of the research and  
13 development can be 10 percent, 15 percent.

14 THE COURT: A6 is what on design, roughly?

15 MR. BAKER: A6 on design is probably 300 to  
16 400 million dollars, the total program including all  
17 of its supports and so forth is probably a two  
18 billion, two and a half billion program at this point.

19 THE COURT: All right, I will allow you to  
20 bring in Mr. Nelson.

21 MR. DE PETRIS: May I just ask one or two  
22 questions?

23 THE COURT: Yes, before we let him go.

24 MR. LUBKIN: He is subject to subpoena by me,  
25 your Honor.



1 THE COURT: Well, I'm not going to have him  
2 trotting back and forth from Grumman, I simply won't  
3 permit it.

4 He is here now, you know your whole theory,  
5 you have been in Washington, you have spoken to  
6 everybody, you have the documents, get him back to his  
7 business, whatever it is.

8 He didn't know his title but he apparently  
9 knows his business.

10 THE WITNESS: I hope you are correct, I will  
11 find out my title.

12 MR. LUBKIN: It is not my intention to place  
13 any undue hardship on Mr. Baker.

14 THE COURT: I am concerned about him, I am  
15 concerned about Grumman and the Navy. These are  
16 institutions presumably doing something of use to the  
17 country and they ought to be doing it.

18 Now, do you have anything else for this man  
19 before we let him go?

20 I don't want him brought back.

21 The Government has rested, it is your case and  
22 you can call him, as you wish.

23 MR. LUBKIN: I would not now since he  
24 testified he didn't have any personal knowledge on  
25 the design competition.

1 MR. DE PETRIS: Your Honor, I would on the  
2 question of relevancy of Mr. Nelson, I would like to  
3 ask a couple of questions before he leaves, if I may.  
4

5 THE COURT: Go ahead.

6 E L L S W O R T H L . B A K E R , having been  
7 previously sworn, continued to testify as follows:

8 REDIRECT EXAMINATION

9 BY MR. DE PETRIS (Continued):

10 Q The two exhibits that you brought today that  
11 have been marked --

12 MR. SUTTER: Three.

13 THE CLERK: 11, 12 and 13 for identification.

14 BY MR. DE PETRIS:

15 Q These are documents relating to the design  
16 contract for the A6 and the E2; is that correct?

17 A That is correct, and also the EA6A, there is  
18 a small group in here.

19 Q Now, will you tell us whether or not the ten  
20 production contracts which have been marked as Government's  
21 Exhibits 1 through 10, whether or not they are separate  
22 contracts from design contracts or contract modifications.

23 MR. LUBKIN: I object, your Honor, that is  
24 the defendant's contention, these ten are only added  
25 to the original contracts.

THE COURT: Well, we will get his statement.



Can you answer the question?

A These are individual contracts and in the terms that we negotiated them each one has a specific contract number.

THE COURT: When you say "these" you mean 1 through 10?

THE WITNESS: That is correct, plus these are individual contracts here (indicating).

THE COURT: You mean 11, 12 and 13?

THE WITNESS: If those are the numbers.

Yes.

BY MR. DE PETRIS:

Q Mr. Baker, if there was to be an amendment of some sort or a modification to a contract, would the documents which constituted the modification of the contract indicate that it was a modification or an amendment of a prior contract?

A Very specifically.

MR. LUBKIN: I object, your Honor.

THE COURT: Overruled.

MR. LUBKIN: Let the record note my objection.

BY MR. DE PETRIS:

Q And having examined Government's Exhibits 1 through 10, is there any reference in those exhibits to any

1  
2 modification or amendment of any prior contract, modification  
3 of any prior contract?

4 A Might I elaborate a little bit on that?

5 THE COURT: You may.

6 A The only thing there might be in these --  
7 should be, should be, is to close out, where they say --  
8 well, where before they became an entity under this contract,  
9 that is with respect that there are a great many amendments  
10 and modifications, that is to the particular contract  
11 involved here, subsequent to this time, and all of which will  
12 be identified to it. The most likelihood is that it does  
13 have a reference to close that one out and say this is  
14 superceding it -- does this come through at all, do you  
15 understand?

16 I will find that paragraph if it is of  
17 interest.

18 Q In other words, if I may put it in my own  
19 words, in other words there might be a reference in one of  
20 those ten contracts terminating or closing out a prior  
21 contract?

22 A Where it was a vehicle for long lead funding,  
23 that is correct, and that would be all the references there  
24 are to modifications, and it would say the other modification  
25 was effected at the same time as closing that contract and



1  
2 establishing this one.

3 Q So it is your testimony that Government's  
4 Exhibits 1 through 10 are separate contracts?

5 A Yes.

6 MR. LUBKIN: Will the record note my  
7 objection.

8 BY MR. DE PETRIS:

9 Q Now are you familiar with the Armed Service  
10 Procurement regulation as to the definition of contract  
11 modification?

12 A Yes.

13 Q And pursuant to that definition, in your  
14 expert opinion are any of these exhibits --

15 MR. LUBKIN: I object, your Honor.

16 Q (Continuing) -- a contract modification?

17 MR. LUBKIN: This man is not an attorney.

18 THE WITNESS: I'm sorry, would you mind saying  
19 the last part of that again?

20 THE COURT: Overruled, I will take it.

21 Q Under the definition of a contract modification  
22 as set forth in the Armed Service Procurement regulations  
23 are any of those exhibits, 1 through 10, a contract  
24 modification of a prior contract?

25 A No, they are not.

1  
2 MR. DE PETRIS: I don't have any further  
3 questions, your Honor.

4 THE COURT: Any questions, Mr. Lubkin?

5 MR. LUBKIN: No, your Honor.

6 THE COURT: All right.

7 Thanks very much.

8 (The witness was excused.)

9 THE COURT: Do you have anybody else here  
10 today?

11 MR. DE PETRIS: No, your Honor.

12 THE COURT: When do you want to set this  
13 hearing?

14 MR. LUBKIN: John, is Monday okay?

15 THE COURT: When can Nelson get up here?

16 MR. DE PETRIS: I will have to call him.

17 THE COURT: Why don't you do that, and since  
18 we will have somebody from Washington, why don't you  
19 and Mr. De Petris and Mr. Sutton (sic) -- Sutter.

20 MR. SUTTER: Judge, I have been called a lot  
21 worse.

22 THE COURT: We will adjourn it without date  
23 but we will complete the case next week.

24 I want it disposed of.

25 Good night.



Thank you very much.

MR. SUTTER: May I just say something off the record?

THE COURT: Yes.

(There was conversation off the record.)

MR. LUBKIN: Excuse me, your Honor, I had a conversation with Mr. Bonsillion say within the last week or two and we tentatively adjourned the sentence to the 18th.

Can we have a continuance of that sentencing to some other date?

THE COURT: Why do you want to adjourn the sentencing?

MR. LUBKIN: I think we should have the right to complete the hearing first before we have sentencing.

THE COURT: I am assuming, unless your brief indicates otherwise, that this is a motion for a new trial pursuant to Rule 33.

That motion, as I understand it, can be made before or after sentence.

MR. LUBKIN: I actually am requesting dismissal, but --

THE COURT: All right.

1  
2 If you have another procedural theory you had  
3 better make it clear because you may have a problem  
4 on your appeal. As I indicated earlier, if this  
5 should go up to the United States Supreme Court they  
6 may not take the same liberal view of the Court of  
7 Appeals, as to its powers, so you had better get  
8 your theories straight.

9 I think you are all right under Rule 33 but  
10 I am not sure.

11 MR. DE PETRIS: Your Honor, as I understand  
12 it, then, Mr. Nelson is to be produced before this  
13 Court for a hearing next week, and as I understand  
14 the subpoena as to the documents they remain quashed.

15 THE COURT: Yes.

16 Call Nelson, if he has something that would be  
17 of help to the Court, let him bring it up.

18 MR. LUBKIN: There are certain documents  
19 which the Navy should have which I have subpoenaed,  
20 namely the advertisements in the commercial business  
21 daily, the solicitation --

22 THE COURT: That is a public document, you have  
23 it available to you.

24 MR. LUBKIN: No, we have subpoenaed it, it  
25 was not available.



1 THE COURT: If it is an advertisement it is  
2 a public document that is available to you, you don't  
3 need the Navy for that. We have it in the libraries  
4 in the Metropolitan New York area so you can get that.

5 MR. LUBKIN: And also this solicitation, which  
6 I believe from the Government and other documents  
7 that should be in the hands of the Navy.

8 THE COURT: If he has it convenient.

9 MR. DE PETRIS: Your Honor, that is exactly  
10 the position we are taking, that the documents which  
11 proceed the design contracts -- I mean you can see  
12 how tenuous the theory is getting.

13 THE COURT: I understand that.

14 If he has it convenient, let him bring it in.  
15 If not I'm not going to have him strip the warehouses  
16 of Washington.

17 As far as advertising is concerned, the Navy  
18 advertises in well-known publications and those  
19 publications are available to you.

20 We can fix a date now.

21 All right, Friday at 10:00 o'clock, Friday  
22 March 21st.

23 We are going to adjourn the sentence until  
24 Friday at 2:00 o'clock.

25 Okay?

1 Good night.

2 MR. LUBKIN: Good night, your Honor.

3 \* \* \*



1  
2  
3 UNITED STATES DISTRICT COURT  
4 EASTERN DISTRICT OF NEW YORK

5 -----x

6 UNITED STATES OF AMERICA :

7 vs. :

74 CR 589

8 JOSEPH RACKER, :

9 Defendant. :

10 -----x

11 United States Court House  
12 Brooklyn, New York

13 March 21, 1975

14 B e f o r e :

15 HON. JACK B. WEINSTEIN,

16 United States District Judge

17  
18 \* \* \*

19  
20  
21  
22  
23  
24 MICHAEL M. MIELE  
25 OFFICIAL COURT REPORTER

## A p p e a r a n c e s :

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Attorneys for the Defendant

\* \* \*



1  
2 MR. SUTTER: If your Honor please, during  
3 the course of this hearing you have been gracious  
4 enough to allow me to attend in a somewhat semi-  
5 official capacity. I requested of the Court the  
6 last time whether I had the right to question the  
7 witness and I think you correctly ruled that I did  
8 not because it was a criminal matter and I was not  
9 counsel to the defendant in this case.

10 Candidly, I think you have noticed that I  
11 have been conferring with Mr. Lubkin and it is no  
12 secret we met several times this week concerning  
13 this case.

14 I should like the opportunity to question  
15 Mr. Nelson and I have a letter of authority from  
16 the defendant where I am now of counsel with Mr.  
17 Lubkin in the case. May I present it to the Court?

18 THE COURT: Is that satisfactory to you?

19 MR. LUBKIN: Yes, your Honor.

20 THE COURT: Mr. Racker, is that what you  
21 want?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: We will be pleased to have you  
24 under those circumstances.

25 File this letter. Make it a Court Exhibit.

THE CLERK: Court's Exhibit No. 4.

E R L I N G            W.        N E L S O N ,    called as a witness,  
having first been duly sworn by the Clerk of the  
Court, testified as follows:

DIRECT EXAMINATION

BY MR. SUTTER:

Q            Mr. Nelson, do you have a capacity with the  
United States Government?

A            Yes, I do.

Q            What is that?

A            I am Deputy Counsel at the Naval Air Systems  
Command, Navy Department, Washington, D. C.

Q            I take it you are admitted to the Bar?

A            Yes, I am.

Q            You are a civilian employee, is that correct?

A            That's correct.

Q            Now, may I ask you this, sir: For how long  
have you been attached to the Department of the Navy?

A            Since 1956.

Q            And prior to that what was your occupation,  
sir?

A            I was a law student.

Q            Have you worked consistently with the Navy  
Department as opposed to other department in the government



1  
2 since 1956?

3 A Yes, in '56, I was employed by the Bureau of  
4 Aeronautics which later became the Naval Air Weapons Command  
5 and it is now Air Systems Command, it's the same organiza-  
6 tion.

7 Q Are you familiar with the procuring activi-  
8 ties of the Navy Department concerning aircraft?

9 A Yes, sir.

10 Q As a matter of fact you are the man pretty  
11 much in charge of it?

12 A I am the No. 2 man.

13 Q That's in the entire United States, is that  
14 right?

15 A As far as naval aircraft is concerned, yes,  
16 sir.

17 Q Are you familiar with some of the statutes  
18 that concern the procurement of naval aircraft?

19 A Yes.

20 Q Are you familiar with Chapter 125 of Article  
21 10 of the United States Code?

22 A Are you speaking of the Armed Services Act?

23 Q No, sir, that the Encouragement of Aviation.

24 A I am aware of that Act.

25 Q The Navy has had a history, has it not, of

1  
2 a method of procuring aircraft?

3 A Yes, it has.

4 Q I don't want to date myself or yourself,  
5 but let us go back to the F-4B-1, that's the double winged  
6 plane.

7 A That's somewhat before my time, I am afraid.

8 Q Let's go to World War II, are you familiar  
9 with the procurement activities then?

10 A I was not engaged in them. The First War  
11 Acts was the first Act where most things were procured.

12 Q Can you tell us what a designed contract is?

13 A Well, I am not sure what you mean by a  
14 design contract. Can you be more specific?

15 Q Would you tell us what happens when the  
16 Navy decides that they need a certain aircraft. What do you  
17 physically do?

18 A Our requirements are determined generally  
19 by the Chief of Naval Operations. They have continued  
20 studies, they tried to determine what in 1980's will be the  
21 threat to the fleet and country, what in the way of an air-  
22 craft could respond to that threat. They come out with what  
23 they call an Operational Directive or requirement which  
24 broadly defines the kind of aircraft they think will serve  
25 to meet that threat.



1  
2 Q I don't mean to interrupt you. In other  
3 words, they would set forth roughly the specifications of  
4 the aircraft they want, is that correct?

5 A They would certainly set forth the performance  
6 they are seeking, at least ranges of performance they are  
7 seeking.

8 Q In other words, the aircraft must have a  
9 certain speed?

10 A Speed, carrying range, this sort of thing.

11 Q In other words, what kind of plane you want?

12 A Yes.

13 Q Now what happens next?

14 A Well, two things can happen and what generally  
15 happens is that a present solicitation notice is published  
16 in the Commerce Business Daily, as well as copies of the  
17 operational directive and other documentation pertaining  
18 to the aircraft are made available to the aircraft industry.  
19 They may or may not respond.

20 Q Now, when you say it is made available to  
21 the aircraft industry, how is that done?

22 A It's either mailed or physically picked up,  
23 depending on the confidential aspects of the document which  
24 may be involved to be picked up by representatives of the  
25 company.

1  
2 Q Do you not, in fact, publicize to the air-  
3 craft industry the basic requirements of that aircraft?

4 A The notice will publicize but very basic re-  
5 quirements of the aircraft, whether it is an attack aircraft  
6 trainer or fighter aircraft but all the details of that air-  
7 craft are not publicized.

8 Q Do you make an invitation for this admis-  
9 sion of a design by advertisement in not less than three  
10 leading aeronautical journals for a period of 30 days?

11 A I am not aware we do that.

12 Q Do you put it in, what's that newspaper you  
13 put it in?

14 A Commerce Business Daily.

15 Q You have a competition for that design, do  
16 you not?

17 A Most generally.

18 Q In other words, you would send out to vari-  
19 ous aircraft corporations, Chance Voigt, McDonnell Douglass,  
20 and Grumman and tell them what you want and they would  
21 compete for the design, is that correct?

22 A Yes.

23 Q That's advertised prior to the time that  
24 you have the competition of the design?

25 A Advertised in the sense that the companies



are made aware of the need.

Q You don't comply with the statute then, is that it?

A Which statute are you talking about?

Q Title 10, United States Code Sec. 2271 et seq.

A No, we procure under the Armed Services Procurement Act.

Q You ignore that statute?

A We haven't used that statute since the Armed Services Procurement Act.

Q As an attorney, you will agree that it has not been repealed, is that right?

A That's right.

Q But you don't follow it?

A No, that's right. The issue did come up a few years ago, with respect to the Air Force competition for the F-15 Fighter Aircraft. Mr. Mendel Rivers of the House Armed Services Committee asked the Air Force why they were not proceeding under the Air Corps Act.

Q You are not in the Air Corps.

A I am interested in the navy --

MR. DE PETRIS: May the witness finish?

THE COURT: Yes.

1  
2 MR. SUTTER: I don't think it's responsive.

3 THE COURT: It may not be directly but it  
4 may help.

5 A I am trying to explain why we don't use  
6 that Act

7 THE COURT: There has been an imputation  
8 that the Navy is violating the law and the witness  
9 is entitled to comment on that at length if he  
10 wishes to do so.

11 MR. SUTTER: I meant no such imputation. I  
12 merely meant to establish that they are not follow-  
13 ing Chapter 135, that's all. I don't ascribe any  
14 illegality to the Government or Navy or Mr. Nelson  
15 and I want the record to be clear on that.

16 THE WITNESS: Do you wish me to proceed?

17 THE COURT: If you wish, I will hear your full  
18 answer.

19 THE WITNESS: Representative Rivers wrote  
20 the Air Force and asked them why they were not pro-  
21 ceeding under this Act. The AirForce's General  
22 Counsel responded that that Act had been supplemented  
23 or interceded by the Armed Services Procurement  
24 Act of 1948. Mr. Rivers then asked the Comptroller  
25 General of the United States for his opinion.



1  
2 We are given to understand that the Comptroller  
3 General advised Mendel Rivers to the same effect,  
4 that the law was there but it did not have to be  
5 used, that the Armed Services Procurement Act was  
6 the better authority.

7 The Comptroller General's correspondence, at  
8 least his correspondence with the Congress, is kept in  
9 a restrictive file and never made public nor do we  
10 have in the Navy Department, executive branch of the  
11 government, any copies of it.

12 Since that exchange of correspondence, the F-15  
13 proceeded to award, contract award on the basis of  
14 the Armed Services Contract Act and several other  
15 aircraft competitions have been held since then, all  
16 under the authority of the Armed Services Procurement  
17 Act.

18 MR. SUTTER: I move to strike as hearsay and  
19 not responsive.

20 THE COURT: Denied.

21 MR. SUTTER: I respectfully except.

22 THE COURT: It is not necessary. To do  
23 well we have a full record.

24 BY MR. SUTTER:

25 Q Are you familiar with an aircraft that is

1 known as E-2?

2 A Yes.

3 Q Here again it's true, is it not, that what  
4 happened was you had some general outline of what type of  
5 aircraft you wanted?

6 A That's right.

7 Q Insofar as that aircraft is concerned, what  
8 did the Navy do?

9 A It invited a number of aircraft companies  
10 to submit proposals.

11 Q Was it advertised in that Commerce Daily?

12 A I have no idea whether it was advertised in  
13 the Commercial Business Daily. I don't know whether that was  
14 an appropriate process then, whether the Commerce Business  
15 Daily was around. There were a number of companies, in fact,  
16 10 or 14 companies I believe that responded or were given  
17 notice of the Navy's desires, I think some 15 as I recall.

18 Q Was it advertised in some places, sir?

19 A I can't say that it was.

20 Q Can you say it was not?

21 A No, I can't.

22 Q So a fair statement is, you're not sure.

23 A I am not sure.

24 Q Did you receive various designs from air-  
25 craft companies?



A Yes, we did.

Q Can you tell me approximately how many on that aircraft?

A I believe there are approximately 12 that responded.

Q Then it gets out of your hands. Is that right?

A No, I believe my notes here show that four responded. I will strike the 12.

Q What occurs, just correct me if I'm incorrect, you solicit from various manufacturers, some are interested and some are not, is that correct?

A Yes.

Q You receive these competing designs?

A Yes.

Q And so technical people rather than lawyers decide which aircraft they prefer?

A That's true.

Q Then what type of a contract do you award?

A We would most normally award a cost plus fix fee contract for design and for development of the initial model.

Q Now, sir, after you award the design contract, in your entire experience with the Navy, have you ever had

any other company in any manner produce the aircraft other than that company that received the design award contract?

A I don't recall. In my experience I believe, during World War II, there were aircraft produced by other manufacturers.

Q In other words, Chance Voigt was not the only ones that made the Corsair?

A I don't know that, I was thinking of the B-24.

Q The Dauntless was not only made by Douglass, it was made by Boeing. Is that correct?

A I don't really know.

Q In any event, in current times and specifically with respect to the E-2, when a design award contract was made, Grumman was considered to be a sole source. Is that correct?

A When it was made?

Q Yes.

A They were the source selected for future aircraft, they might well be the sole source if that answers your question, future aircraft of that design and type.

Q To your knowledge, has any corporation other than Grumman ever manufactured for the Department of the Navy an E-2 in any modification?



1  
2 A In a production standpoint?

3 Q Yes.

4 A I don't know any other company, no.

5 Q Let's take the A-6 and its modifications  
6 including EA-6 and right down the line, here again on the  
7 A-6, what did the Department of Navy do with respect to that  
8 aircraft when specifications were originally sent down?

9 A The original A-6 again a number of companies  
10 were informed of the Navy's requirements. These companies  
11 responded with various design proposals. I think there were  
12 some eight firms that responded on technical -- with techni-  
13 cal -- with costs, proposals out of 19 who were sent the  
14 Navy's requirements.

15 Q Were the requirements advertised, sir?

16 A Again I don't know whether at that time?

17 Q Can you testify that they were not?

18 A No, I couldn't testify to that that they  
19 were not.

20 Q In any event, major aircraft industries were  
21 solicited, is that correct?

22 A That's correct.

23 Q Here again you got your specifications,  
24 designs and everything else. Is that right?

25 A We had our general operating -- no, we

1  
2 didn't have detail specifications.

3 Q I mean from the companies?

4 A We had their technical proposal, how they  
5 would build an aircraft to meet the requirements.

6 Q I think you described in Washington at one  
7 time, it would fill up this room, wouldn't it?

8 A Well, this is a pretty good-sized room, it  
9 would have filled up the room in Washington, the amount of  
10 data.

11 Q Was there a design award contract issued  
12 on the A-6?

13 A A contract was awarded on the A-6.

14 Q To whom?

15 A The Grumman for initial design development  
16 wind tunnel test data, no actual aircraft as such, to do  
17 the research and development.

18 Q Was Grumman the sole source for the produc-  
19 tion to the Department of Navy of the A-6 and its modifica-  
20 tions?

21 A No other firm has produced the A-6 or EA-6  
22 aircraft.

23 Q The EA-6 is a modification of the EA-6 it-  
24 self, an electronic plane as opposed to the regular?

25 A Its configuration is different. It's a



four-seat aircraft.

Q Also it has a couple of bumps on it?

A Yes.

Q Was Grumman the sole source of that aircraft to the Department of Navy?

A At the time the Navy elected to go to the countermeasures aircraft which was the E version. Yes, they were in the sense it was the E-6 aircraft that was best suited for that purpose.

Q Understand me, I am not criticizing the intention or desire of the Navy or whether or not you got the right aircraft. I am trying to get at a simple point. As a sole source contractor, when you made your findings and determinations, you knew it was only going to be Grumman. Isn't that correct?

A When we made our findings and determinations for the production basis, that's right.

Q Nobody else was involved?

A That was the basis of the determination, that only Grumman could produce our aircraft in a timely manner.

Q So the record remains clear, Grumman has made aircrafts from the TBF historically to date, Hellcat, Bearcat?

1  
2 A Yes.

3 Q Now, sir, it's a fact, is it not, that inso-  
4 far as the Navy is concerned, and was concerned on the A-6,  
5 E-2, and various other aircraft, that you would award the  
6 contract prior to the time you made a finding up until last  
7 year?

8 A That's not true, to my knowledge.

9 Q Did you ever tell anybody that?

10 A Would you repeat what your question is?

11 Q Up until last year, it's a fact, is it not,  
12 that after you awarded the design competition contract, that  
13 you would issue the so-called ordering contracts for the  
14 aircraft prior to the time you made determinations and  
15 findings?

16 A I couldn't, that's not true.

17 Q It didn't matter, you knew it was going to  
18 be Grumman and only Grumman. Is that correct?

19 A We couldn't place a contract without a  
20 determination and finding.

21 Q I understand.

22 A We could not commence the negotiation process  
23 with the contractor without the determination and finding.  
24 That's a legal requirement.

25 Q What I'm trying to get at is the following:



1  
2 That when you award the design award contract, you have  
3 already determined at that point that they are the best  
4 qualified with the best design to produce the aircraft.  
5 Isn't that correct?

6 A In essence.

7 Q It becomes almost unnecessary to redetermine  
8 and refind that which you have determined and found in the  
9 design award. Isn't that correct?

10 A No.

11 Q Let me ask you this: When you give the  
12 design award contract for a prototype aircraft, you order  
13 from the design award contractee. Is that correct?

14 A We order under the design contract two or  
15 three prototype aircraft which are then tested to see whether  
16 or not they do.

17 Q They work?

18 Q Well, they may fly but not perform the  
19 function for which we were buying them for.

20 Q I won't get into the 111 and 114.

21 A Fine.

22 Q Did you ever ask any other manufacturer to  
23 bid to the Navy Department a price for the production of an  
24 E-2 or A-6 or EA-6 or any modification?

25 A No, sir.

1  
2 Q It only went to Grumman?

3 A That's right.

4 Q That was based on a design award contract?

5 A Based on the fact they had the tooling, had  
6 the know-how and were in production of that aircraft and we,  
7 the Navy sought approval for additional quantities and  
8 received such approval at which time we wrote our determina-  
9 tion that Grumman could only supply them in the time we  
10 needed and contracted for additional quantities.

11 Q They had the facilities and expertise for  
12 the design?

13 A Yes.

14 Q Originally that contract was awarded on a  
15 competitive basis, was it not?

16 A Yes, on a competitive negotiated basis.

17 Q The Navy did not predetermine that only  
18 Grumman was going to build an aircraft called the E-2?

19 A Did not predetermine at the very beginning,  
20 that's right.

21 Q Your other major aircraft manufacturers  
22 would come in with their designs, proposals and the Navy  
23 would consider it, correct?

24 A Right.

25 Q They were solicited in active competition?



1  
2 A Correct.

3 Q Wherever the marbles fell, the Navy picked  
4 the aircraft they wanted?

5 A Right.

6 Q It's true in the A-6 and EA-6 and all of  
7 the modifications. Correct?

8 A In all likelihood, you said modifications,  
9 there could be modifications by other companies other than  
10 Grumman.

11 Q To your knowledge, did that ever happen?

12 A No.

13 Q How about your out of production aircraft,  
14 same thing?

15 A Depending on the type of aircraft, we could  
16 have other companies make modifications out of production  
17 aircraft.

18 Q Did you?

19 A Yes.

20 Q Let me ask you this: You still can't tell  
21 us whether or not the original design award contract was  
22 advertised. Is that correct?

23 A It was competitively negotiated.

24 Q Was it advertised?

25 MR. DE PETRIS: I object unless Mr. Sutter

defines what he means by advertise.

THE COURT: Do you have any problem with the question?

THE WITNESS: I am not sure whether he's getting at the issue if formal advertising serves competitive negotiation, there is a significant distinction. Advertised in the sense the companies were made aware of the Navy's needs, my answer is, yes. Exactly how they were made aware, I am not sure.

BY MR. SUTTER:

Q How about two step formal advertising? That is a formal advertising.

Q Was that employed in these contracts?

A No.

Q They were competitively negotiated, is that correct?

A That's right.

Q After you get the design award and the Navy determines they need, number of aircraft, you now consider the design award contractor, the sole source. Right?

A A company has been awarded the design contract and is designing what they are designing and we want more, we would endeavor to contract with that company in a



1  
2 Q I am sorry. On the E-2, the A-6, the EA-6  
3 and their various modifications, did the Navy Department ever  
4 go to any other aircraft manufacturer with the design pro-  
5 posed contract and say to them, "How much will you build  
6 the aircraft for as opposed to Grumman's price?"

7 A I thought I did understand your question.

8 Q Would you answer it?

9 A I will try to explain it to make sure every-  
10 one understands: The design competition involves not only  
11 the submission of design by all companies, but by submission  
12 of their cost and production cost, as well as their capa-  
13 bilities to build the aircraft on the numbers we are consider-  
14 ing. The contract we award at that point is the one for the  
15 design of the aircraft, development and wind tunnel. That  
16 doesn't mean we haven't looked at what these various com-  
17 panies expect their cost to be if they went into production  
18 of that aircraft. We have seen to some degree, and have  
19 evaluated in a competitive manner, what this aircraft will  
20 cost and what it will do.

21 Q May I ask the question again, your Honor?

22 THE COURT: Yes.

23 Q After a design award contract was issued to  
24 Grumman Aircraft or Grumman Aerospace on the E-2, the A-6,  
25 the EA-6 and their various modifications, did the Navy ever

1  
2 go to any other manufacturer of aircraft and ask them how  
3 much they would charge them to build the plane?

4 MR. DE PETRIS: I have no objection, I point  
5 out that it's a difficult question than the pre-  
6 vious question, the question is after the contract  
7 has been awarded, the prior question wasn't nar-  
8 rowed to that point after it was issued.

9 Q I am sorry, that's my error. Assume the  
10 design contract was awarded to Grumman, A-6, EA-6 and modi-  
11 fications on design contracts are awarded, did the Navy ever  
12 go to any other manufacturer with those designs, those spe-  
13 cification and find out how much they would charge to build  
14 that aircraft?

15 A Not to my knowledge.

16 Q So your negotiation with Grumman was only  
17 as to the price of the aircraft, right?

18 A No, we have to negotiate terms, type of  
19 contract.

20 Q Delivery dates, production and things like  
21 that?

22 A No, the fleet needs or -- we renegotiate  
23 the contract, fixed price and incentive price.

24 Q You only go to one outfit?

25 A Yes.



Q Did you go to Boeing and ask them?

A No.

Q Lockheed?

A No.

Q Martin Marietta?

A Not to my knowledge.

Q Rockwell?

A My answer is the same.

Q Fairchild, McDonnell Douglass, any major aircraft company excluding Piper?

A On these three aircraft?

Q Yes.

A Not to my knowledge.

Q Now, you are familiar with what we call a production contract. Is that correct?

A I am familiar with a production contract.

Q That's a derivative from design award contract. Isn't that correct?

MR. DE PETRIS: Objection to the question, unless Mr. Sutter describes what he means by derivative.

THE COURT: Be more precise.

Q After the design award contract is given to an aircraft manufacturer, you then issue production contracts.

1  
2 Is that correct?

3 A Only some time later when the aircraft has  
4 been flown, tested and evaluated and found to be satisfac-  
5 tory.

6 Q Once you have the contract and it's going  
7 to be the way you want, you deliver contracts?

8 A If it's our requirements, meets our require-  
9 ments.

10 Q That always goes to the person who got the  
11 design award, is that correct?

12 A Yes.

13 Q The production contract therefore derives  
14 itself from the design award contract. Is that correct?

15 A Only in the sense the contractor has pro-  
16 duced, manufactured and we have tested and found his product  
17 satisfactory, he's the producer we are seeking. It's not  
18 part of the design award contract.

19 Q It comes directly from it, does it not?

20 A I suppose you can say it's a result of his  
21 excellent performance under that contract that he gets more  
22 orders

23 Q Right. That doesn't go to anybody else,  
24 right?

25 A No, usually it does not.



1  
2 Q At least it didn't under the A-6, E-2 or EA-6,  
3 right?

4 A That's right.

5 Q As an attorney, attached to the Department  
6 of the Navy and your expertise in governmental procurement  
7 of Naval aircraft, I ask you, isn't it a fact that the  
8 design award contract is the prime contract?

9 A It's the number one. It's the first con-  
10 tract that is awarded, yes.

11 Q And as a man attached to the Department of  
12 Navy in aircraft procurement, it's a fact, is it not, also,  
13 sir, that that prime contract is competitively negotiated?

14 A The design contract is invariably or most  
15 always competitively negotiated.

16 Q But it's not just simply negotiated?

17 A That's right. There could be instances of  
18 a sole source negotiation but very rare.

19 Q To your knowledge, in the E-2, A-6 or  
20 EA-6 and their various modifications, they were not just  
21 simply negotiated - the prime contracts?

22 MR. DE PETRIS: Objection unless you define  
23 "simply negotiated," there two kinds of negotiations,  
24 competitive and sole source.

25 THE COURT: You will be able to develop

1  
2 that. If the witness doesn't understand the ques-  
3 tion, he will indicate it.

4 A The design competition of the A-6 and E-2  
5 was a competitive negotiation.

6 Q EA-6 would be the same thing, is that correct?

7 A No.

8 Q That's a modification of the A-6?

9 A Yes and no competitive negotiation with  
10 that.

11 Q That was the sole source --

12 THE COURT: How long is your direct going to  
13 take?

14 And your cross?

15 MR. DE PETRIS: Very short.

16 MR. LUBKIN: I may call other witnesses,  
17 Mr. Kay of the FBI.

18 THE COURT: Is he here? I have a request  
19 from the Second Circuit to appear there at 12:30.  
20 If it's going to mean you are going to be incon-  
21 venienced, I will tell them I won't appear.

22 MR. SUTTER: I have no further questions,  
23 your Honor.

24 THE COURT: Cross?

25 MR. LUBKIN: I have no questions.



MR. DE PETRIS: I have a few questions.

CROSS-EXAMINATION

BY MR. DE PETRIS:

Q Mr. Nelson, directing your attention to the production contracts with respect to the E-2 and A-6 and their modifications, any contract after the initial design contract, were those productions contracts separate or contract modifications?

A Separate contracts.

Q Are you familiar with the terms, negotiated and formal advertising?

A Yes, I am.

Q Did those terms have a distinguishing meaning as used in the Navy?

A They certainly do.

Q Is that distinguishing meaning set forth in the Armed Services Procurement regulations?

A Yes and in the Act as well from whence the regulations stem.

Q Using that definition, of the terms negotiated and formally advertised, would you tell us which procedure was followed with respect to the production contracts in this case?

A It was negotiated.

1  
2 Q Can you tell us which procedure was followed  
3 with respect to the design contracts for the E-2 and EA-6?

4 A Competitive negotiation.

5 Q Not formal advertising?

6 A No.

7 Q Has the Navy ever entered into a contract  
8 with Grumman with respect to the production of aircraft or  
9 any of it's support equipment by formal advertising?

10 A No. At least I would have to say not since  
11 I have been with the Navy since 1956 and I am not aware of  
12 anything prior to that time.

13 Q Now, the production contracts that were issued  
14 with respect to Grumman with respect to the production of  
15 the E-2, A-6 or subsequent modifications, is that produc-  
16 tion contract between the Navy and Grumman a prime contract?

17 A Yes.

18 Q And finally, Mr. Nelson, competition is not --  
19 directing your attention to the difference between negoti-  
20 ation and formal advertising as set forth in the regulations,  
21 Armed Services Procurement regulations, would it be fair to  
22 state that competition is not a distinction between the  
23 two?

24 A Indeed it would, that's a fair statement.

25 Q And in fact there is a regulation, is there



not, which says the maximum extent practicable competition should be used with respect to both types of procedure. Is that correct?

A Formal advertising is impossible without competition. Negotiation is possible without competition but yes, the Act requires us to use competition to the greatest extent practicable and feasible.

Q That's whether you follow negotiation or formal advertising?

A If you didn't have any competition, you couldn't have formal advertising.

MR. DE PETRIS: No further questions, your Honor.

REDIRECT EXAMINATION

BY MR. SUTTER:

Q In any event, the design contract is the prime contract, correct?

A That's the first contract let.

Q And everything derives from that?

MR. DE PETRIS: Objection.

MR. SUTTER: I will withdraw it.

Q All of your production contracts are derivative from that design award. Is that correct?

1  
2 A Design award contract for a given aircraft.

3 MR. DE PETRIS: I object.

4 THE COURT: If you can answer it, I will allow  
5 it.

6 MR. DE PETRIS: This has been gone into on  
7 direct examination.

8 THE COURT: I will allow it.

9 Q Isn't that correct, sir?

10 A Again, if the results of the design development  
11 prove to be satisfactory, the Navy continues to have a need  
12 and the money, that manufacturer is in a very good position  
13 to sell more aircraft.

14 Q In the E-2, A-6 and modifications, they only  
15 went to Grumman?

16 A That's right.

17 Q You don't know whether or not, of your own  
18 knowledge, those particular design award contracts were adver-  
19 tised in any manner, do you, and I'm referring to the E-2 and  
20 A-6 and the modifications?

21 A Certainly industry was aware of them from  
22 responses we received.

23 Q It wasn't a deep-secret?

24 A No, indeed.

25 MR. SUTTER: That's all.



1  
2 THE COURT: Thank you. You can go back to  
3 Washington.

4 MR. DE PETRIS: May we have a very brief offer  
5 of proof of the relevancy of any testimony from an  
6 FBI agent as to whether a contract is negotiated or not.

7 MR. LUBKIN: The defense did subpoena Mr.  
8 Jeffrey Kay and the reason is a conversation was held  
9 on January 23rd, this year in the presence of the pre-  
10 vious witness, Mr. Nelson and certain statements were  
11 made. I think we're entitled to call him.

12 THE COURT: What statements and for what purpose?

13 MR. LUBKIN: The statements have to do with  
14 some of the previous testimony of Mr. Nelson, whether  
15 it's accurate or not.

16 THE COURT: You want to use prior inconsistent  
17 statements for impeachment purposes?

18 MR. LUBKIN: That's correct.

19 THE COURT: Are you going to ask this witness  
20 whether he made certain statements, before you call the  
21 other witness? He's going back to Washington. It's  
22 normal practice to provide a foundation by asking the  
23 witness. It's true the new federal rules don't re-  
24 quire it. I have some discretion. In view of the  
25 fact he may be returning to Washington and couldn't

1  
2 he recalled, I rule that if you are going to try to  
3 impeach him by prior inconsistent statements, you ought  
4 to provide the foundation while he's still here.

5 MR. LUBKIN: Could we have one moment?

6 MR. SUTTER: I am not privy to any of these con-  
7 versations and I didn't touch on them for that reason.

8 MR. LUBKIN: With the Court's permission, I  
9 would like to ask Mr. Nelson a series of questions which  
10 won't take too long which related to prior statements  
11 made.

12 THE COURT: You may.

13 DIRECT EXAMINATION

14 BY MR. LUBKIN:

15 Q On January 23rd, this year, there was a con-  
16 versation held in your office in Washington, D.C., wherein  
17 there was present myself, my partner, United States Attorney  
18 DePetris and Jeffrey Kay, agent of the FBI. Is that right?

19 A I believe that's the group that was there.

20 Q And there was also a Mr. William Hill present  
21 at that time?

22 A I don't recall his name.

23 Q He was sitting next to you?

24 A Yes, I believe he was there.

25 Q During -- how long did that conference last?



1  
2 A I'd say one hour and a half, or two hours.

3 Q During that conference, did you at that time,  
4 make statements that the United States Navy was, shall we say,  
5 I'm trying to remember your exact words, criticized by General  
6 Accounting Office as to when they were making determination  
7 of findings pertaining to aircraft?

8 A Yes, I might have mentioned a legal difference  
9 of opinion between Department of Defense and General Accounting  
10 Office that arose, I would imagine in the late 50's, having  
11 to do with the timing of the making of determinations and  
12 findings.

13 Q Didn't you say the Department of the Navy was  
14 criticized by General Accounting Office because determinations  
15 of findings were being made after the contract was awarded?

16 A No. I wouldn't have said that. What I said,  
17 I'm sure I must have said, was that the Department of Defense  
18 which includes Navy, in their operation under the Armed  
19 Services Procurement Act, would start negotiations, commence  
20 talking with companies and would not make an award of the  
21 contract until they had the determination and findings signed  
22 by the proper official. The DOD legal opinion.

23 Q What is that?

24 A Department of Defense, was that the contract  
25 could not be awarded without the determination and finding,

1  
2 but as long as that determination and finding were made the  
3 day before the contract was executed, that was legally suf-  
4 ficient. The General Accounting Office took the view  
5 that DOD, Department of Defense could not commence negoti-  
6 ations, commence discussions, conversations with potential  
7 contractors for a particular material or service until there  
8 was a determination and finding. And the Department of  
9 Defense accepted the Comptroller General's opinion.

10 So I would not have said the contract could  
11 have been awarded prior to the determination and finding  
12 being made.

13 MR. LUBKIN: No further questions.

14 THE COURT: Thank you, sir.

15 It won't be necessary to call Mr. Kay, the  
16 inconsistency if it exists will not effect the  
17 finding.

18 THE COURT: Does the defendant rest?

19 MR. LUBKIN: Yes. I would like the Court  
20 to take judicial notice of certain regulations.  
21 Should I read them off?

22 THE COURT: Read all those you cited in  
23 your brief.

24 MR. LUBKIN: I have additional ones. I have  
25 a printed list.



1  
2 THE COURT: All right. Give it to me. Mark  
3 these as Defendant's Exhibit for purposes of taking  
4 judicial notice.

5 MR. LUBKIN: I will apologize to Mr. DePetrus  
6 This is the only copy I have. I don't even have a  
7 copy for myself.

8 MR. DE PETRIS: Regulations are all in the  
9 code of the CFR.

10 THE COURT: I will take them all for con-  
11 venience.

12 MR. LUBKIN: I don't have any others.

13 THE COURT: Mark it.

14 THE CLERK: Defendant's Exhibit G in evidence.  
15 (So marked)

16 THE COURT: Anything else?

17 MR. SUTTER: That's my purpose of addressing  
18 the Court.

19 THE COURT: Yes?

20 MR. SUTTER: May I offer in evidence on be-  
21 half of the defendant, Government's Exhibit 11 for  
22 identification and Government's Exhibit 13 for  
23 identification. Those, if your Honor please, were  
24 the design contracts produced by Mr. Baker from  
25 Grumman Aerospace.

1  
2 MR. DE PETRIS: No objection.

3 THE COURT: Mark them.

4 THE CLERK: Government's Exhibits 11, 12 and  
5 13 in evidence.

6 THE COURT: Anything further?

7 MR. LUBKIN: I couldn't locate it at the  
8 moment. I received one more telegram from North  
9 American Rockwell which I would like to submit to  
10 the Court.

11 THE COURT: It will be deemed submitted. It's  
12 the same as the others , I take it.

13 MR. LUBKIN: Yes.

14 THE COURT: Deemed submitted.

15 MR. LUBKIN: NOthing further, your Honor.

16 THE COURT: The defendant rests.

17 MR. DE PETRIS: The government rests.

18 THE COURT: I am prepared to make my ruling.

19 MR. LUBKIN: I was going to make a motion.

20 THE COURT: You may.

21 MR. LUBKIN: First I would like to make a  
22 motion to disnaiss, that the government has not proved  
23 beyond a reasonable doubt that initial contract,  
24 the defendants claim they were made by formal adver-  
25 tising under the law and that the section that the



1 defendant is prosecuted under the code which  
2 defines negotiated without formal advertising.  
3 It's clear from the testimony herein that the initial  
4 contract conforms to all the requirements of formal  
5 advertising.

6 All the other production contracts are  
7 merely amendments of the initial contract. This  
8 last statement can be substantiated by the testimony  
9 of Mr. Nelson this morning. The basis of our addi-  
10 tional contention, your Honor can be found in our  
11 memorandum in the exhibits just made before your  
12 Honor.

13 There is in the code of federal regulations  
14 and in the law different agencies, different forms  
15 of formal advertising including two step advertising.  
16 There is great confusion even amongst expert  
17 attorneys as to what the definition is, how a layman  
18 can possibly understand this, we don't know.

19 In any event, because of the multitude in  
20 the different regulations of formal advertising,  
21 two step advertising, it makes the law so vague as  
22 to actually in effect make the law unconstitutional.

23 Further basis of the argument, of course, can  
24 be read in our hearing memorandum that was previousl  
25 submitted to the Court.

1 Thank you.

2 THE COURT: The motion is in all respects  
3 denied. The government has proved beyond a reason-  
4 able doubt to the Court's satisfaction that the pro-  
5 duction contract was a negotiated contract. It's  
6 not relevant but should the Appellate Court wish  
7 the Court's finding, I also find that the design  
8 contract was a negotiated contract beyond a reason-  
9 able doubt.

10 The sub-contracts involving the defendant were  
11 issued under negotiated contracts. The regulations,  
12 the contracts themselves and the testimony of the  
13 two experts who testified, Mr. Elwood Baker and Mr.  
14 Nelson are in full agreement on these points. The  
15 full cross-examination and direct examinations have  
16 not shaken the witnesses nor instilled any doubt in  
17 the Court's mind.

18 The motion to set aside the plea of guilty  
19 is denied. The motion for a new trial is denied.  
20 Anything else you need to protect your record?

21 MR. LUBKIN: I think you have covered every-  
22 thing.

23 MR. DE PETRIS: I have one comment;  
24 You found it was not relevant but made a finding with  
25 respect to designed contracts. I ask you to make



1 a finding as to whether the production contracts  
2 are separated contracts or contract modification of  
3 the design contracts.

4 THE COURT: Production contract is a separate  
5 and independent contract. And all these findings  
6 are beyond a reasonable doubt, those cognizant of  
7 the aircraft industry workings with and should have  
8 been sufficiently apprised of these facts that the  
9 regulations and practice was not so arcane, as to  
10 be beyond the understanding people engaged in the  
11 industry and that this defendant himself had suf-  
12 ficient background and knowledge to have been him-  
13 self fully aware that he was dealing with a sub-  
14 contract under a negotiated contract.

15 Thus, if specific intentions are required of  
16 this factor, it is found here beyond a reasonable  
17 doubt. I am prepared to sentence. Here is the  
18 probation report and attached documents which came  
19 from you.

20 Would you look at it, discuss it with your  
21 client and be ready for sentence in about 15 minutes.

22 Have you seen the probation report?

23 MR. LUBKIN: Yes.

24 THE COURT: Have you discussed it with your  
25 client?

1 MR. LUBKIN: Of course the defendant here has  
2 no previous criminal involvement with the law. It  
3 is also mentioned here in a statement of the defend-  
4 ant's cooperation. I would like to clarify some-  
5 thing. Coincidentally, the statement says that Mr.  
6 Racker, for a period of some 11 months refused to  
7 cooperate and sometime in December there was a  
8 conversation as to cooperation. I would like to bring  
9 that to your attention, that that was at or about  
10 the time that my law firm started to represent Mr.  
11 Racker.

12 I am not saying this in any derogatory man-  
13 ner of any attorney that previously represented him.  
14 I can't speak personally what happened before but  
15 from the time we had represented Mr. Racker, we have  
16 worked on this diligently to a point where we con-  
17 cluded this morning.

18 I would like to point out to you, I have --  
19 well, I would like to add one additional letter that  
20 is not included in what is before you. It's a  
21 letter from Singer Corporation and it's addressed  
22 to Mr. Racker, and it shows it's a letter from  
23 Robert Aebly, General Traffic Manager. It shows  
24 to confirm a discussion with Gary Vance, that per-  
25 mission is granted to utilize one of their people



1 in doing the sub-contract work because their parti-  
2 cular employer is familiar with it.

3 THE COURT: Thank you. The Clerk will mark  
4 it in evidence.

5 THE CLERK: Court's Exhibit 1.

6 (So marked)

7 MR. LUBKIN: There is no question as to the  
8 background of the defendant as to the high caliber  
9 education. There are also in the file, and I think  
10 it's been indicated to the Court before that of all  
11 the individuals in this industry, my client, Mr.  
12 Racker is probably looked up to as the expert.

13 In fact, he has written the leading books  
14 that probably most of the others utilize in their  
15 guide in preparing technical manuals for airplanes  
16 and electronics and other items the government  
17 uses.

18 I would like to say this, this occurred in  
19 December of last year that Mr. Racker u tilizing  
20 some of his other talents, did cooperate fully with  
21 the United States Government. His cooperation was  
22 to such an extent that he put himself out.

23 To my knowledge, an arrest was effectuated  
24 and I think that party was arraigned and I don't  
25 know the present disposition of that particular

1 case. In addition, if it does come to trial, Mr.  
2 Racker will hold himself available for testimony  
3 or any other cooperation that the government requests.

4 It is my opinion and I have known --

5 MR. DE PETRIS: I will confirm to the Court  
6 as I have indicated to the probation department  
7 that since early January of '75, when we reached  
8 the agreement, that Mr. Racker has fully cooperated  
9 with the government and Mr. Lubkin is correct that  
10 one arrest has resulted from his cooperation and  
11 he was arraigned before the Magistrate and hearing  
12 was waived.

13 I don't anticipate we will go to trial in  
14 that. I assume there will be a disposition but if  
15 it does, Mr. Racker will be a witness at that trial.

16 MR. LUBKIN: Thank you, Mr. DePetrus. You  
17 have letters from Rabbis, also letters from certain  
18 individuals who are still associated with Navy con-  
19 tracting. All the letters, without going into detail,  
20 speak of the defendant's character, integrity, asset  
21 to society, et cetera.

22 I would like to bring one more point to your  
23 attention, although it's not 100 per cent completed,  
24 within the past month, Mr. Racker has undergone a  
25 very, very thorough audit by the agents of the IRS,



1 going back to 1971 and actually up to '74.

2 To our knowledge, 1971 which apparently is here  
3 has been audited and Mr. Racker will not sustain any  
4 additional penalties. He got a clean bill of health.  
5 I understand that audits for the ensuing three years  
6 are almost completed. At this time, I don't have  
7 the result but I have spoken to his accountant and  
8 it appears likely that again the same result may be  
9 obtained. As far as that audit is concerned, complete  
10 disclosure of all financial records were given to  
11 the agents of the IRS.

12 In addition the defendant has served our country,  
13 has received an honorable discharge. I would say out  
14 of all this, it took me some time -- the defendant  
15 now recognizes he is to a great extent -- is remorse-  
16 ful of what actually happened.

17 I honestly believe that from the time I met him,  
18 and I do extensive criminal work, there was a  
19 naivete of the defendant of what occurred here. I  
20 don't want to put Mr. DePetrus on the spot or any  
21 agents of the FBI, but it didn't run true to form.  
22 I honestly believe that Mr. Racker was sincere, that  
23 what he's trying to do was not only in effect saving  
24 the government money but was trying to do and pro-  
25 duce the best product for these airplanes during the

1 War, Vietnam, and these planes were directly related  
2 to it.

3 The irony of it is, in knowing much more that  
4 the government would have reached out to the expert  
5 in the field regardless of anything else. If they had  
6 a real problem, they would reach out to him. Recently  
7 the government had a problem, still has a problem with  
8 one of its airplanes and called Mr. Racker to see how  
9 this is put together.

10 I recognize what you said at the time the plea  
11 was taken. I am a realist and recognize you have a pat-  
12 tern of sentencing that you have a panel of Judges and  
13 what has happened in previous cases.

14 I believe Mr. Racker is different from the  
15 others, he has been punished. He is still suffering  
16 from the problems and any additional sentencing in  
17 this case won't be in the best interest of justice.

18 I honestly recommend to your Honor a sort of  
19 a conditional discharge or some type of suspended sen-  
20 tence and I think you have a person who will go into  
21 society and actually be helpful to the national inter-  
22 est of our country. He can assist and do things with  
23 the government in order for planes and electronic  
24 equipment and other items to be done more effectively.

25 THE COURT: Do you want to add anything?



1 MR. RACKER: There is one thing I had spoken  
2 to my attorney about, my involvement with USC. I am  
3 a technical man, an engineer. It sounds like I was  
4 awfully naive and ridiculous for me to be that way but  
5 my interest in that company was technical. People  
6 above me were responsible for legal aspects. Anything  
7 I did was strictly with their understanding and guidance.

8 I said we have a problem, I can't get the infor-  
9 mation, they say, here's the way to do it. They  
10 shifted the responsibility on my shoulders. With  
11 Westinghouse they did the same thing according to the  
12 testimony I got, they did the same thing that I said  
13 and they said I didn't know anything about it.

14 Now, that I knew what the law was I cooperated  
15 with the attorney and checked with my counsel. That  
16 company did not do that. They went and made the pay-  
17 ment according to the testimony I got on the tape  
18 which shows they were not honest with the DA and I  
19 was led down the garden path.

20 I feel very upset about that. If they, if some-  
21 one told me that I was doing something illegal, I would  
22 have never done it. They had a big law firm and were  
23 supposed to represent the people. Now, I understand  
24 that they were illegal and they were aware of it. No  
25 one ever told me that it was illegal.

1 I never got one cent for myself. They carefully  
2 examined the records and have completely exonerated  
3 me of getting any money at all as a result of this  
4 whole involvement. They were subject to the law and  
5 it's easy for people who don't have children to think,  
6 so what if the Navy does a bad job.

7 I had a personal interest in this. It's not  
8 easy to think that someone might die if you don't do  
9 the job right. I saved over \$1,000,000 for Grumman  
10 on my own time with these people to get the information  
11 to make sure everything was done right.

12 Everybody acknowledges that fact. I had no  
13 personal interest at all except to do that kind of  
14 work. That's it.

15 THE COURT: What is the situation with United  
16 States Electronics, I had the impression from reading  
17 the report and knowing what I do about these matters  
18 and it's confirmed by what is said that United States  
19 Electronics Publications did let this man down.

20 What is happening with them? Are they going  
21 to be proceeded against?

22 MR. DE PETRIS: I am not sure what you mean.

23 THE COURT: What has happened is they shifted  
24 the blame on him and let him go. Are they going to  
25 get away with that without a substantial fine?



1 MR. DE PETRIS: Mr. Racker was the president  
2 of the company?

3 MR. LUBKIN: No.

4 MR. DE PETRIS: And the chairman was Mr. Kersner.

5 THE COURT: What is the corporation's status?  
6 Is it doing Grumman's work?

7 MR. DE PETRIS: I am not sure, that's up to  
8 the Navy as to whether or not to take department pro-  
9 ceedings against the company.

10 THE COURT: Well, this is a prosecutorial  
11 decision, not one for the Court. I have had the feel-  
12 ing all along that corporate responsibilities both of  
13 Grumman and of some of the sub-contracting corpora-  
14 tions were being avoided.

15 The defendant does have an impeccable record.  
16 He's obviously a highly respected individual both in  
17 community and his professional field judging from the  
18 letters I received all of which I have read.

19 He has done a fine professional job apparently  
20 for the Navy and the country. He's not being sentenced  
21 in order to punish him, or to deter him. I believe  
22 he will lead a blameless life. He's in one of the  
23 unfortunate positions that people sometimes find them-  
24 selves, having been caught up in legal schemes, willy-  
25 nilly, he becomes responsible for it and perhaps

1 those more responsible escape.

2 He's being sentenced solely to deter others so  
3 that the word will go out that if this is done, jail  
4 sentences and heavy fines will result. The other  
5 defendants in this case were likewise fairly blameless,  
6 although not as competent as this defendant. They  
7 were in a similar position from a moral standpoint.

8 Accordingly, I sentenced the defendant to  
9 \$10,000 fine on each count, a total of \$60,000 consecu-  
10 tive. Two years on each count, suspended execution  
11 of sentence except for six months which is to be  
12 served in Community Treatment Center, the other year  
13 and a half to be on unsupervised probation. These  
14 terms are concurrent. The total sentence therefore,  
15 is two years, six months in Community Treatment  
16 Center and \$60,000 fine.

17 Community Treatment Center will allow the  
18 defendant to be released during the day so that he  
19 can work and week-ends and holidays. There may not  
20 be sufficient room in the Community Center at this  
21 point. This is the responsibility of the government.  
22 He should be in by Monday. If they haven't got room  
23 for you, you will get credit.  
24  
25



1 MR. LUBKIN: As previously heard today, we had  
2 a hearing, it's the intention of the attorneys present  
3 to, respectfully, to appeal such decision. I would  
4 request of you to stay the execution pending determina-  
5 tion of that appeal.

6 THE COURT: You think there is a substantial  
7 question.

8 MR. LUBKIN: Yes.

9 THE COURT: Based on the attorney's certifi-  
10 cation and the fact that the Court doesn't consider  
11 the defendant a danger to society, the motion for a  
12 stay pending appeals granted and the defendant is  
13 released in his own custody pending that time.

14 MR. LUBKIN: Thank you very much.

15 MR. DE PETRIS: At this time the government  
16 moves to dismiss the indictment consisting of 43  
17 counts, the government moves to dismiss all the counts  
18 of that indictment other than 1, 4, 10, 16, 19 and  
19 36. Other than those six counts, the government moves  
20 to dismiss the remaining counts of that indictment.

21 THE COURT: Any objection?

22 MR. LUBKIN: No.

23 THE COURT: Motion granted.

24 \*\*\*  
25

I N D E X

<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>
ERLING W. NELSON	4	30 35	32

EXHIBITS

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1 Letter from Singer Corp.	44

\* \* \*



AFFIDAVIT OF SERVICE BY MAIL

State of New York  
SS  
County of Nassau

*Masper L. Clemente*, being duly sworn, deposes and says:  
That he is ~~the president~~ *the president* ~~of the~~ *appendix* of the Davenport Press, Inc.,  
printers of the attached ~~Brief~~ *appendix* in the matter of

*USA against Joseph Hacker*

That on the *28* day of *May*, *1975* he served 3 copies of  
said ~~Brief~~ on  
*Appendix*

*Ronald Depetris*  
*U. S. Attorney's Office*  
*225 Cadman Plaza East*  
*Brooklyn N.Y.*

by depositing same, securely enclosed in a post paid wrapper in a  
Post Office regularly maintained by the United States government  
at Mineola, New York, County of Nassau, directed to said attorney(s)  
at the address listed above, that being the address within the  
state designated for that purpose upon the preceding papers in this  
action, or the place where ~~he~~ then kept an office between which  
places there was and now is a regular communication by mail.

Deponent is over the age of 21 years.

*Masper L. Clemente*

Sworn to before me this  
day of

*Kevin G. Sleicher*  
KEVIN G. SLEICHER  
NOTARY PUBLIC, State of New York  
No. 30-4502141  
Qualified in Nassau County  
Commission Expires March 30, 1977